



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार 23 फरवरी, 2017 / 4 फाल्गुन, 1938

हिमाचल प्रदेश सरकार

लोक निर्माण विभाग

अधिसूचना

शिमला-2, 18 फरवरी, 2017

सं0पी0बी0डब्ल्यू0(बी0)एफ(5) 73 / 2016.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः ऊंटपुर, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में रा0 उच्च मार्ग-21ए पिन्जौर-बददी-नालागढ़-स्वारघाट को चौड़ा करने के

लिए भूमि अर्जित करनी अपेक्षित है, अतएव एतद् द्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को, जो इससे सम्बन्धित हो सकते हैं, की जानकारी के लिए भूमि अर्जन, पुनर्वास और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार अधिनियम, 2013 (2013 का 30) की धारा-11 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने और सर्वेक्षण करने तथा उप धारा द्वारा अपेक्षित अथवा अनुमत: अन्य सभी कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं।

4. कोई भी हितबद्ध व्यक्ति जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपति हो तो वह इस अधिसूचना के प्रकाशित होने के साठ दिन की अवधि के भीतर लिखित रूप में भू-अर्जन समाहर्ता, लोक निर्माण विभाग, विन्टर फिल्ड शिमला, (हि0 प्र0) के समक्ष अपनी आपति दायर कर सकता है।

विवरणी

| जिला | तहसील | गांव | खसरा न0 | रकबा (बीघा में) |
|------|---------|--------|---------------|--------------------|
| सोलन | नालागढ़ | ऊंटपुर | 375 / 1 | 2-0 |
| | | | 375 / 2 | 0-2 |
| | | | 366 / 1 | 0-7 |
| | | | 364 / 1 | 0-6 |
| | | | 363 / 1 | 0-19 |
| | | | 368 / 1 | 0-13 |
| | | | 357 / 1 | 4-17 |
| | | | 16 / 1 | 1-3 |
| | | | 16 / 2 | 0-12 |
| | | | 12 / 1 | 0-12 |
| | | | 14 / 1 | 1-11 |
| | | | 6 / 1 | 0-12 |
| | | | 5 | 2-2 |
| | | | 48 / 1 | 1-7 |
| | | | 47 / 1 | 0-17 |
| | | | 17 / 1 | 0-15 |
| | | | 688 / 15 | 0-19 |
| | | | 680 / 369 / 1 | 0-7 |
| | | | 681 / 639 / 1 | 3-13 |

| | | | | |
|--|--|--|------------------|--------------|
| | | | 689 / 15 / 1 | 0—17 |
| | | | 13 / 1 | 1—3 |
| | | | किता : 21 | 25—15 |

आदेश द्वारा,
हस्ताक्षरित/—
अति० मुख्य सचिव(लोक निर्माण)।

लोक निर्माण विभाग

अधिसूचना

शिमला—2, 20 फरवरी, 2017

सं०पी०बी०डब्ल्यू०(बी०)एफ(5)75 / 2016.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः सनेड़, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में रा० उच्च मार्ग—21ए पिन्जौर—बददी—नालागढ़—स्वारघाट को चौड़ा करने के लिए भूमि अर्जित करनी अपेक्षित है, अतएव एतद् द्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को, जो इससे सम्बन्धित हो सकते हैं, की जानकारी के लिए भूमि अर्जन, पुनर्वास और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार अधिनियम, 2013 (2013 का 30) की धारा—11 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने और सर्वेक्षण करने तथा उप धारा द्वारा अपेक्षित अथवा अनुमतः अन्य सभी कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं।

4. कोई भी हितबद्ध व्यक्ति जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपति हो तो वह इस अधिसूचना के प्रकाशित होने के साठ दिन की अवधि के भीतर लिखित रूप में भू-अर्जन समाहर्ता, लोक निर्माण विभाग, विन्टर फिल्ड शिमला, (हि० प्र०) के समक्ष अपनी आपति दायर कर सकता है।

विवरणी

| जिला | तहसील | गांव | खसरा न० | रकबा (बीघा में) |
|------|---------|-------|-----------------|--------------------|
| सोलन | नालागढ़ | सनेड़ | 1788 / 1136 / 1 | 0—1 |
| | | | 1789 / 1136 / 1 | 0—18 |
| | | | 1413 / 1 | 0—9 |
| | | | किता : 3 | 1—8 |

आदेश द्वारा,
हस्ताक्षरित/—
अति० मुख्य सचिव(लोक निर्माण)।

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Shimla, the 29th December, 2016*

No.Shram (A) 6-4/2016 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

| Sr. No. | Case No: | Title of the Case | Date of Award |
|----------------|-----------------|--|----------------------|
| 1. | 27/2014 | Shri Hira Singh V/s M/S SCL Infratech Limited, Gurgaon & Ors. | 10 |
| 2. | 73/2016 | Shri Krishan Lal V/s H.P. State Forest Corporation Ltd. Shimla-2, H.P. | 10 |
| 3. | 37/2012 | Shri Raghu Nandan katiyar V/s M/S Total Health Care, Parwanoo District Solan H.P. | 10 |
| 4. | 35/2012 | Shri Hari Chand V/s M/S —do— | 10 |
| 5. | 39/2012 | Shri Dewan Chand V/s M/S —do— | 10 |
| 6. | 38/2012 | Shri Surinder Katiyar V/s M/S —do— | |
| 7. | 34/2012 | Shri Rakesh Jaswal V/s M/S —do— | |
| 8. | 30/2014 | Shri Ishwar Singh & Anr. V/s M/S Indo Farm Equipment Limited, Baddi District Solan, H.P. | 10 |
| 9. | 11/2012 | Shri Hans Raj Barwal V/s Himachal Pradesh State Electricity Board, Shimla & Anr. | |
| 10. | 73/ 2014 | Shri Dev Raj V/s Himachal Pradesh State Electricity Board, Shimla & Ors. | |

By order,
R. D. DHIMAN, IAS,
Pr. Secretary (Lab. & Emp.).

12.11.2016

Present : Petitioner in person.

Sh. Twinkle Sirkeck, Assistant Manager HR for respondent.

With the efforts of Lok Adalat, the matter has been settled between the parties. It has been stated by Shri Twinkle Sirkeck, Assistant Manager, HR that they are ready and willing to pay a sum of Rs. 25,000/- (Rs. Twenty Five Thousand only) to the petitioner in lieu of full & final settlement of the case arising out of the reference no. 27 of 2014. He further stated that the aforesaid payment shall be made to the petitioner within a period of 30 days. To this effect his statement recorded separately.

Vide separate statement, the petitioner has accepted a sum of Rs. 25,000/- (Rs. Twenty Five Thousand only) to the petitioner in lieu of full & final settlement of the case arising out of the reference no. 27 of 2014.

Therefore, the reference is disposed of in view of the statements of the parties which shall form a part of the award/order. The aforesaid payment shall be made to the petitioner within a period of 30 days from today failing which the same shall carry interest @ 9% per annum. Let a copy of this award/ order be sent to appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

12.11.2016

(Sushil Kukreja)
Chairman
Lok Adalat

(Dr. Sushma Kaushal)
Member.

(Dr. M.L. Kaushal)
Member.

4.11.2016.

Present : None for petitioner.

Notice issued to the respondent not received back. Case called twice but none appeared on behalf of the petitioner. It is 10:45 AM. Be awaited.

(SUSHIL KUKREJA)

Presiding Judge,
Labour Court, Shimla.

Case called again

Present : None.

It is 12:50 PM. Case called again but none appeared on behalf of the petitioner. Be called after lunch.

(SUSHIL KUKREJA)

Presiding Judge,
Labour Court, Shimla.

Case called after lunch

Present : None.

Case called repeatedly in pre and post lunch sessions but none appeared on behalf of the petitioner. For today, neither the petitioner nor his counsel appeared before this Court despite the fact that on the last date of hearing Shri Sunil Sharma, Advocate had appeared on his behalf which shows that the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file. The following reference has been received from appropriate government for adjudication:

“Whether alleged termination of services of Shri Krishan Lal S/o Shri Hari Nand R/o Village Rohiaina P.O Dharech, Tehsil Theog District Shimla HP during the year 1999 by the Divisional Manager HP State Forest Corporation Ltd. Forest working Division Shimla-2, who has raised his industrial dispute after about 9 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

From the aforesaid reference is the clear that the petitioner has alleged his termination during the year, 1999 to be illegal and unjustified but he has failed to appear before this Court. The aforesaid reference also makes it clear that the petitioner has raised the present dispute after about 9 years which seems that the petitioner is not serious about the present dispute. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent during the year 1999. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

(SUSHIL KUKREJA),

4.11.2016.

*Presiding Judge,
Labour Court, Shimla.*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT SOLAN**

Ref. No. 37 of 2012.

Instituted on.14.6.2012.

Decided on 5.11.2016.

Raghu Nandan Katiyar S/o Shri Mahadev Prasad R/o Village Ambota, Sector-5, Taksal, Parwanoo, Tehsil Kasasuli, District Solan, HP.

Vs.

M/s Total Health Care, Sector-5, Taksal Parwanoo, Tehsil Kasauli, District Solan, HP through its General Manager.

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Ms. Kumud Thakur, Advocate vice Shri Ashwani Kondal, Advocate.

For respondent : Shri Alok Bhardwaj, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of the services of Shri Raghu Nandan Katiyar S/o Shri Mahadev Prasad R/o Village Ambota, Sector-5, Taksal, Parwanoo, Tehsil Kasasuli, District Solan, HP by the Occupier/Factory Manager M/s Total Health Care Plot no.17 Ambota, Sector-5, Parwanoo, District Solan, HP w.e.f. 12.10.2010 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to?”

2. In nutshell, the case of the petitioner is that he was appointed as peon-cum-helper by the respondent in the month of August, 2009 and that on 11.10.2010, his services were terminated

without any reason and cause and that too without giving notice as prescribed under section 25-F of the Industrial Disputes act, 1947 (hereinafter referred to as Act). It is further stated that the petitioner approached the respondent on number of occasion for his reengagement but neither he was allowed to enter the gate of the factory nor assigned any reason for his illegal termination. On 12.10.2010, the petitioner issued demand notice claiming reinstatement along-with back-wages and all consequential benefits but when nothing was received by the petitioner from the Labour Commissioner, he approached the Hon'ble High Court and pursuant to order dated 4.5.2012 passed in CWP No. 2819/2012, the matter was referred to this Court. The petitioner was drawing a salary of ₹ 3800/- per month at the time of his termination and also contributed towards EPF. Against this back-drop a prayer has been made that the petitioner be reinstated in service as fitter with seniority and continuity along-with back wages.

3. The respondent contested the claim by filing reply wherein preliminary objections had been raised qua maintainability of petition, abandonment of job, estoppel and that the petitioner had not approached the Court with clean hands. On merits, it has been asserted that the services of the petitioner had never terminated by the respondent but he abandoned the job at his own and even the respondent had written several letters to the petitioner for resuming duties but he did not turn up. It is further asserted that since, the petitioner is gainfully employed, he only wants to extract money from the respondent. It is denied that the petitioner approached the respondent for his re-engagement and he was not allowed to enter the gate of the factory and that since the services of the petitioner have never been terminated, the respondent has no objection if he resume his duties. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder to the reply, the petitioner reaffirmed the allegations by denying those of the respondent.

5. Pleadings of the parties give rise to the following issues which were struck on 9.7.2013.

Whether the termination of the services of the petitioner *w.e.f.* 12.10.2010, without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...*OPP.*

1. If issue no.1. is proved in affirmative to what service benefits, the petitioner is entitled to? ...*OPP.*
2. Whether this petition is not maintainable as alleged? ... *OPR.*
3. Whether this petition is time barred as alleged? ... *OPR.*
4. Whether the petitioner is estopped from filing this petition by his own acts, conduct etc.? ... *OPR.*
5. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

| | |
|-------------|--------------------|
| Issue no. 1 | No. |
| 2 | Becomes redundant. |
| 3 | No. |

4 No.

5 Not pressed.

Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issue no. 1.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated in utter violation of the provisions of the Act as neither any notice was served upon him nor he was paid any compensation.

9. On the other hand, learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who himself abandoned his job without intimation to the respondent. He further contended that the respondent is ready and willing to re-instate the petitioner but he does not want to work and he only wants to extract money from the respondent.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PA wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he admitted that he was asked to perform the duties of loading and unloading of nitrogen cylinders and that he refused to do the aforesaid work. He denied that he argued and quarreled with the incharge of the department. He admitted that the respondent management asked him to join his duties and he joined the same on 31.10.2010. He further admitted that on 31.10.2010 he left the premises other workers have also left the premises with him and thereafter he did not turn up. He further admitted that during conciliation proceedings the respondent management asked him and other co-workers to resume the duties but he refused the same and that during the pendency of the present case, he was also asked to resume his duties but he refused to do the same. He admitted that he does not want to work with the company but wants money from the company. He denied that his services were never terminated by the respondent He admitted that at present he was working on daily wages.

11. On the other hand, the respondent has examined one Shri Prashant Mathur Accounts Executive, who tendered his affidavit Ex. RW-1/A, in examination-in-chief wherein he reiterated almost all the contents of reply filed by the respondent. He also tendered in evidence authority letter Ex. RW-1/B and special power of attorney Ex. RW-1/C. In cross-examination, he denied that the services of the petitioner have been terminated by the respondent and that the petitioner was doing the work of loading and unloading. He further denied that the petitioner is entitled for back-wages and seniority. He admitted that no notice to call back the petitioner had been issued. He expressed his ignorance that how many days the petitioner had worked with the company.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had left the job at his own and only wants to extract money from the respondent company as admitted by him in his cross-examination. At this stage, it would be relevant to reproduce the extract of his cross-examination, which reads as under:

“It is correct that I was asked to perform the duties of loading and unloading of Nitrogen Cylinders. It is also correct that I refused to do the aforesaid work.....It is correct that after this incident I left the premises. It is also correct that the respondent management

asked me to join the duties and I joined the same on 31.10.2010. It is correct that when I left the premises, other workers have also left the premises with me..... It is correct that on 31.10.2010, I along-with other workers, left the company premises and thereafter I did not turn up to perform my duties. It is correct that during conciliation the respondent management asked me and other co-workers to resume the duties but I refused the same. It is correct that during the pendency of the present case, I was also asked to resume my duties but I refused to do the same. It is correct that I do not want to work with the company but want the money from the company.”

From the perusal of the cross-examination of the petitioner, it is clear that when the petitioner was asked to perform the duties of loading and unloading of nitrogen cylinders, he refused to do so and after that incident he left the premises. It has also been admitted by him that the respondent had asked him to join the duties and he joined the same on 31.10.2010 but on the same day he along-with other workers had left the premises and thereafter never turned up to perform his duties. He also admitted that he does not want to do any work with the respondent and only wants money from the respondent. He further admitted that he is working as daily wage worker. The respondent in its reply as well as RW-1 in his affidavit Ex. RW-1/A categorically stated that they had asked the petitioner to resume his duties during conciliation proceedings as well as during the pendency of the present case but he refused to do the same. Thus, from the perusal of evidence on record it has become clear that the respondent time and again had offered the petitioner to resume his duties but he refused to resume the same.

13. Therefore, in view of the entire evidence on record, it has become clear that the respondent never terminated the services of the petitioner rather he had left the job at his own and he only wants to extract money from the respondent. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

Issue no. 2

14. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue no. 3.

15. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed his claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 4

16. The learned counsel for respondent contended that the petition filed by the petitioner is time barred. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. that:-*

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 4

17. During the course of arguments, the learned counsel for the respondent has not pressed the aforesaid issue, hence, the same is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 5th day of November, 2016.

(SUSHIL KUKREJA),

*Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla,
Camp at Solan.*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT SOLAN**

**Ref. No. 35 of 2012.
Instituted on.14.6.2012.
Decided on 5.11.2016.**

Hari Chand S/o Shri Geeta Ram R/o Village Kundlu, P.O Mashlukhana, Tehsil Kasauli,
District Solan, HP. *...Petitioner.*

Vs.

M/s Total Health Care, Sector-5, Taksal Parwanoo, Tehsil Kasauli, District Solan, HP
through its General Manager. *...Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Ms. Kumud Thakur, Advocate
vice Shri Ashwani Kondal, Advocate.

For respondent : Shri Alok Bhardwaj, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of the services of Shri Hari Chand S/o Shri Geeta Ram R/o Village Kundlu, P.O Mashlukhana, Tehsil Kasasuli, District Solan, HP by the Occupier/ Factory Manager M/s Total Health Care Plot no.17 Ambota, Sector-5, Parwanoo, District Solan, HP w.e.f. 8.1.2010 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to?”

2. In nutshell, the case of the petitioner is that he was appointed as an operator by the respondent on 6.5.2008 and that in the month of December, 2009, he was directed to do the work of loading and unloading but when the petitioner objected to the work assigned to him, the respondent started threatening him to face dire consequences and thereafter on 7.1.2010, his services had been terminated without assigning any reason and without giving one months' notice as prescribed under section 25-F of the Industrial Disputes act, 1947 (hereinafter referred to as Act). It is further stated that the petitioner approached the respondent on number of occasion for his reengagement but he was not allowed to enter the gate of the factory. On 19.1.2010, the petitioner issued demand notice claiming reinstatement along-with back-wages and all consequential benefits but when nothing was received by the petitioner from the Labour Commissioner, he approached the Hon'ble High Court and pursuant to order dated 4.5.2012 passed in CWP No. 2819/2012, the matter was referred to this Court. The petitioner was drawing a salary of ₹ 4250/- per month at the time of his termination and ₹ 380/- were being contributed towards EPF. Against this back-drop a prayer has been made that the petitioner be reinstated in service as fitter with seniority and continuity along-with back wages.

3. The respondent contested the claim by filing reply wherein preliminary objections had been raised qua maintainability of petition, abandonment of job, estoppel and that the petitioner had not approached the Court with clean hands. On merits, it has been denied that the respondent threatened the petitioner at any point of time but it is submitted that he refused to do the assigned work and also argued and quarreled with the incharge of the department and left the premises with other co-workers. Thereafter, the respondent had written several letters to the petitioner for resuming duties and after that he came in the factory on 31.10.2010 for work but at 10:00 AM he left the company premises with other co-workers without any reason and without any cause and thereafter he never turned up. It is further asserted that the services of the petitioner had never terminated by the respondent but he abandoned the job at his own. It is denied that the petitioner approached the respondent for his re-engagement and that since the services of the petitioner have never been terminated, the respondent has no objection if he resume his duties. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder to the reply, the petitioner reaffirmed the allegations by denying those of the respondent.

5. Pleadings of the parties give rise to the following issues which were struck on 9.7.2013.

1. Whether the termination of the services of the petitioner w.e.f. 8.1.2010, without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ... *OPP*
2. If issue no.1. is proved in affirmative to what service benefits, the petitioner is entitled to? ... *OPP*

3. Whether this petition is not maintainable as alleged? ... *OPR*
4. Whether this petition is time barred as alleged? ... *OPR*
5. Whether the petitioner is estopped from filing this petition by his own acts, conduct etc.? ... *OPR*
6. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 No.

Issue no. 2 Becomes redundant.

Issue no. 3 No.

Issue no. 5 Not pressed.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issue no. 1.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated in utter violation of the provisions of the Act as neither any notice was served upon him nor he was paid any compensation.

9. On the other hand, learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who himself abandoned his job without intimation to the respondent. He further contended that the respondent is ready and willing to re-instate the petitioner but he does not want to work and he only wants to extract money from the respondent.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PA wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he admitted that he was asked to perform the duties of loading and unloading of nitrogen cylinders and that he refused to do the aforesaid work. He denied that he argued and quarreled with the incharge of the department. He admitted that the respondent management asked him to join his duties and he joined the same on 31.10.2010. He further admitted that on 31.10.2010 he left the premises other workers have also left the premises with him and thereafter he did not turn up. He further admitted that during conciliation proceedings the respondent management asked him and other co-workers to resume the duties but he refused the same and that during the pendency of the present case, he was also asked to resume his duties but he refused to do the same. He admitted that he does not want to work with the company but wants money from the company. He denied that his services were never terminated by the respondent He admitted that at present he was working on daily wages.

11. On the other hand, the respondent has examined one Shri Prashant Mathur Accounts Executive, who tendered his affidavit Ex. RW-1/A, in examination-in-chief wherein he reiterated almost all the contents of reply filed by the respondent. He also tendered in evidence authority letter Ex. RW-1/B and special power of attorney Ex. RW-1/C. In cross-examination, he denied that the services of the petitioner have been terminated by the respondent and that the petitioner was doing the work of loading and unloading. He further denied that the petitioner is entitled for back-wages and seniority. He admitted that no notice to call back the petitioner had been issued. He expressed his ignorance that how many days the petitioner had worked with the company.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had left the job at his own and only wants to extract money from the respondent company as admitted by him in his cross-examination. At this stage, it would be relevant to reproduce the extract of his cross-examination, which reads as under:

“It is correct that I was asked to perform the duties of loading and unloading of Nitrogen Cylinders. It is also correct that I refused to do the aforesaid work.....It is correct that after this incident I left the premises. It is also correct that the respondent management asked me to join the duties and I joined the same on 31.10.2010. It is correct that when I left the premises, other workers have also left the premises with me..... It is correct that on 31.10.2010, I along-with other workers, left the company premises and thereafter I did not turn up to perform my duties. It is correct that during conciliation the respondent management asked me and other co-workers to resume the duties but I refused the same. It is correct that during the pendency of the present case, I was also asked to resume my duties but I refused to do the same. It is correct that I do not want to work with the company but want the money from the company.”

From the perusal of the cross-examination of the petitioner, it is clear that the when the petitioner was asked to perform the duties of loading and unloading of nitrogen cylinders, he refused to do so and after that incident he left the premises. It has also been admitted by him that the respondent had asked to him to join the duties and he joined the same on 31.10.2010 but on the same day he along-with other workers had left the premises and thereafter never turned up to perform his duties. He also admitted that he does not want to do any work with the respondent and only wants money from the respondent. He further admitted that he was working in his fields as agriculturist. The respondent in its reply as well as RW-1 in his affidavit Ex. RW-1/A categorically stated that they had asked the petitioner to resume his duties during conciliation proceedings as well as during the pendency of the present case but he refused to do the same. Thus, from the perusal of evidence on record it has become clear that the respondent time and again had offered the petitioner to resume his duties but he refused to resume the same.

13. Therefore, in view of the entire evidence on record, it has become clear that the respondent never terminated the services of the petitioner rather he had left the job at his own and he only wants to extract money from the respondent. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

Issue no. 2

14. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue no. 3.

15. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed his claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly

maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 4

16. The learned counsel for respondent contended that the petition filed by the petitioner is time barred. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon^{ble} Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon^{ble} Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. that:—*

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Therefore, the aforesaid law declared by the Hon^{ble} Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 4

17. During the course of arguments, the learned counsel for the respondent has not pressed the aforesaid issue, hence, the same is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 5th day of November, 2016.

(SUSHIL KUKREJA)

*Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla,
Camp at Solan.*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT SOLAN**

Ref. No. 39 of 2012.

Instituted on.14.6.2012.

Decided on 5.11.2016.

Diwan Chand S/o Shri Geeta Ram R/o Village Nagal Bhaga, P.O & Tehsil Kalka, District
Panchkula, Haryana. ...Petitioner.

Vs.

M/s Total Health Care, Sector-5, Taksal Parwanoo, Tehsil Kasauli, District Solan, HP
through its General Manager. ...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Ms. Kumud Thakur, Advocate

vice csl. Shri Ashwani Kondal, Advocate.

For respondent : Shri Alok Bhardwaj, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of the services of Shri Diwan Chand S/o Shri Geeta Ram Village Nagal, P.O & Tehsil Kalka, District Panchkula, Haryana by the Occupier/Factory Manager M/s Total Health Care Plot no.17 Ambota, Sector-5, Parwanoo, District Solan, HP w.e.f. 8.1.2010 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to?”

2. In nutshell, the case of the petitioner is that he was appointed as welder and fitter by the respondent on 10.7.2006 and that in the month of December, 2009, he was directed to do the work of loading and unloading but when the petitioner objected to the work assigned to him, the respondent started threatening him to face dire consequences and thereafter on 7.1.2010, his services had been terminated without assigning any reason and without giving one months’ notice as prescribed under section 25-F of the Industrial Disputes act, 1947 (hereinafter referred to as Act). It is further stated that the petitioner approached the respondent on number of occasion for his reengagement but he was not allowed to enter the gate of the factory. On 19.1.2010, the petitioner issued demand notice claiming reinstatement along-with back-wages and all consequential benefits but when nothing was received by the petitioner from the Labour Commissioner, he approached the Hon'ble High Court and pursuant to order dated 4.5.2012 passed in CWP No. 2819/2012, the matter was referred to this Court. The petitioner was drawing a salary of ₹ 5,000/- per month at the time of his termination and ₹ 600/- were being contributed towards EPF. Against this back-drop a prayer has been made that the petitioner be reinstated in service as fitter with seniority and continuity along-with back wages.

3. The respondent contested the claim by filing reply wherein preliminary objections had been raised qua maintainability of petition, abandonment of job, estoppel and that the petitioner had not approached the Court with clean hands. On merits, it has been denied that the respondent

threatened the petitioner at any point of time but it is submitted that he refused to do the assigned work and also argued and quarreled with the incharge of the department and left the premises with other co-workers. Thereafter, the respondent had written several letters to the petitioner for resuming duties and after that he came in the factory on 31.10.2010 for work but at 10:00 AM he left the company premises with other co-workers without any reason and without any cause and thereafter he never turned up. It is further asserted that the services of the petitioner had never terminated by the respondent but he abandoned the job at his own. It is denied that the petitioner approached the respondent for his re-engagement and that since the services of the petitioner have never been terminated, the respondent has no objection if he resume his duties. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder to the reply, the petitioner reaffirmed the allegations by denying those of the respondent.

5. Pleadings of the parties give rise to the following issues which were struck on 9.7.2013.

1. Whether the termination of the services of the petitioner w.e.f. 8.1.2010, without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ... *OPP*
2. If issue no.1. is proved in affirmative to what service benefits, the petitioner is entitled to? ... *OPP*
3. Whether this petition is not maintainable as alleged? ... *OPR*
4. Whether this petition is time barred as alleged? ... *OPR*
5. Whether the petitioner is estopped from filing this petition by his own acts, conduct etc.? ... *OPR*
6. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 No.

Issue no. 2 Becomes redundant.

Issue no. 3 No.

Issue no. 4 No.

Issue no. 5 Not pressed.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings*Issue no. 1.*

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated in utter violation of the provisions of the Act as neither any notice was served upon him nor he was paid any compensation.

9. On the other hand, learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who himself abandoned his job without intimation to the respondent. He further contended that the respondent is ready and willing to re-instate the petitioner but he does not want to work and he only wants to extract money from the respondent.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PA wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he admitted that he was asked to perform the duties of loading and unloading of nitrogen cylinders and that he refused to do the aforesaid work. He denied that he argued and quarreled with the incharge of the department. He admitted that the respondent management asked him to join his duties and he joined the same on 31.10.2010. He further admitted that on 31.10.2010 he left the premises other workers have also left the premises with him and thereafter he did not turn up. He further admitted that during conciliation proceedings the respondent management asked him and other co-workers to resume the duties but he refused the same and that during the pendency of the present case, he was also asked to resume his duties but he refused to do the same. He admitted that he does not want to work with the company but wants money from the company. He denied that his services were never terminated by the respondent He admitted that at present he was working on daily wages.

11. On the other hand, the respondent has examined one Shri Prashant Mathur Accounts Executive, who tendered his affidavit Ex. RW-1/A, in examination-in-chief wherein he reiterated almost all the contents of reply filed by the respondent. He also tendered in evidence authority letter Ex. RW-1/B and special power of attorney Ex. RW-1/C. In cross-examination, he denied that the services of the petitioner have been terminated by the respondent and that the petitioner was doing the work of loading and unloading. He further denied that the petitioner is entitled for back-wages and seniority. He admitted that no notice to call back the petitioner had been issued. He expressed his ignorance that how many days the petitioner had worked with the company.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had left the job at his own and only wants to extract money from the respondent company as admitted by him in his cross-examination. At this stage, it would be relevant to reproduce the extract of his cross-examination, which reads as under:

“It is correct that I was asked to perform the duties of loading and unloading of Nitrogen Cylinders. It is also correct that I refused to do the aforesaid work.....It is correct that after this incident I left the premises. It is also correct that the respondent management asked me to join the duties and I joined the same on 31.10.2010. It is correct that when I left the premises, other workers have also left the premises with me..... It is correct that on 31.10.2010, I along-with other workers, left the company premises and thereafter I did not turn up to perform my duties. It is correct that during conciliation the respondent management asked me and other co-workers to resume the duties but I refused the same. It is correct that during the pendency of the present case, I was also asked to resume my duties but I refused to do the same. It is correct that I do not want to work with the company but want the money from the company.”

From the perusal of the cross-examination of the petitioner, it is clear that when the petitioner was asked to perform the duties of loading and unloading of nitrogen cylinders, he refused to do so and after that incident he left the premises. It has also been admitted by him that the respondent had asked to him to join the duties and he joined the same on 31.10.2010 but on the same day he along-with other workers had left the premises and thereafter never turned up to perform his duties. He also admitted that he does not want to do any work with the respondent and only wants money from the respondent. He further admitted that he was working somewhere else on daily wages basis. The respondent in its reply as well as RW-1 in his affidavit Ex. RW-1/A categorically stated that they had asked the petitioner to resume his duties during conciliation proceedings as well as during the pendency of the present case but he refused to do the same. Thus, from the perusal of evidence on record it has become clear that the respondent time and again had offered the petitioner to resume his duties but he refused to resume the same.

13. Therefore, in view of the entire evidence on record, it has become clear that the respondent never terminated the services of the petitioner rather he had left the job at his own and he only wants to extract money from the respondent. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

Issue no. 2

14. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue no. 3

15. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed his claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 4

16. The learned counsel for respondent contended that the petition filed by the petitioner is time barred. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co operative Marketing –cum- processing Service Society Limited and Another. that:—*

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under

the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 4

17. During the course of arguments, the learned counsel for the respondent has not pressed the aforesaid issue, hence, the same is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 5th day of November, 2016.

(SUSHIL KUKREJA),

*Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla,
Camp at Solan.*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT SOLAN**

**Ref. No. 38 of 2012.
Instituted on.14.6.2012.
Decided on 5.11.2016.**

Surinder Katiyar S/o Shri Jagdish Parkash R/o Village Ambota, Sector-5, Taksal,
Parwanoo, Tehsil Kasauli, District Solan, HP. *...Petitioner.*

Vs.

M/s Total Health Care, Sector-5, Taksal Parwanoo, Tehsil Kasauli, District Solan, HP
through its General Manager. *...Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Ms. Kumud Thakur, Advocate
vice Shri Ashwani Kondal, Advocate.

For respondent : Shri Alok Bhardwaj, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of the services of Shri Surinder Katiyar S/o Shri Jagdish Parkash R/o Village Ambota, Sector-5, Taksal, Parwanoo, Tehsil Kasasuli, District Solan, HP by the Occupier/Factory Manager M/s Total Health Care Plot no.17 Ambota, Sector-5, Parwanoo, District Solan, HP w.e.f. 8.1.2010 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to?”

2. In nutshell, the case of the petitioner is that he was appointed as fitter by the respondent on 10.7.2006 and that in the month of December, 2009, he was directed to do the work of loading and unloading but when the petitioner objected to the work assigned to him, the respondent started threatening him to face dire consequences and thereafter on 8.1.2010, his services had been terminated without assigning any reason and without giving one months' notice as prescribed under section 25-F of the Industrial Disputes act, 1947 (hereinafter referred to as Act). It is further stated that the petitioner approached the respondent on number of occasion for his reengagement but he was not allowed to enter the gate of the factory. On 19.1.2010, the petitioner issued demand notice claiming reinstatement along-with back-wages and all consequential benefits but when nothing was received by the petitioner from the Labour Commissioner, he approached the Hon^{ble} High Court and pursuant to order dated 4.5.2012 passed in CWP No. 2819/2012, the matter was referred to this Court. The petitioner was drawing a salary of ₹ 4800/- per month at the time of his termination and ₹ 580/- were being contributed towards EPF. Against this back-drop a prayer has been made that the petitioner be reinstated in service as fitter with seniority and continuity along-with back wages.

3. The respondent contested the claim by filing reply wherein preliminary objections had been raised qua maintainability of petition, abandonment of job, estoppel and that the petitioner had not approached the Court with clean hands. On merits, it has been denied that the respondent threatened the petitioner at any point of time but it is submitted that he refused to do the assigned work and also argued and quarreled with the incharge of the department and left the premises with other co-workers. Thereafter, the respondent had written several letters to the petitioner for resuming duties and after that he came in the factory on 31.10.2010 for work but at 10:00 AM he left the company premises with other co-workers without any reason and without any cause and thereafter he never turned up. It is further asserted that the services of the petitioner had never terminated by the respondent but he abandoned the job at his own. It is denied that the petitioner approached the respondent for his re-engagement and that since the services of the petitioner have never been terminated, the respondent has no objection if he resume his duties. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder to the reply, the petitioner reaffirmed the allegations by denying those of the respondent.

5. Pleadings of the parties give rise to the following issues which were struck on 9.7.2013.

1. Whether the termination of the services of the petitioner w.e.f. 8.1.2010, without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ... *OPP*
2. If issue no.1. is proved in affirmative to what service benefits, the petitioner is entitled to? ... *OPP*
3. Whether this petition is not maintainable as alleged? ... *OPR*

4. Whether this petition is time barred as alleged? ... OPR

5. Whether the petitioner is estopped from filing this petition by his own acts, conduct etc.?
... OPR

6. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 No.

Issue no. 2 Becomes redundant.

Issue no. 3 No.

Issue no. 4 No.

Issue no. 5 Not pressed.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issue no. 1.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated in utter violation of the provisions of the Act as neither any notice was served upon him nor he was paid any compensation.

9. On the other hand, learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who himself abandoned his job without intimation to the respondent. He further contended that the respondent is ready and willing to re-instate the petitioner but he does not want to work and he only wants to extract money from the respondent.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PA wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he admitted that he was asked to perform the duties of loading and unloading of nitrogen cylinders and that he refused to do the aforesaid work. He denied that he argued and quarreled with the incharge of the department. He admitted that the respondent management asked him to join his duties and he joined the same on 31.10.2010. He further admitted that on 31.10.2010 he left the premises other workers have also left the premises with him and thereafter he did not turn up. He further admitted that during conciliation proceedings the respondent management asked him and other co-workers to resume the duties but he refused the same and that during the pendency of the present case, he was also asked to resume his duties but he refused to do the same. He admitted that he does not want to work with the company but wants money from the company. He denied that his services were never terminated by the respondent He admitted that at present he was working on daily wages.

11. On the other hand, the respondent has examined one Shri Prashant Mathur Accounts Executive, who tendered his affidavit Ex. RW-1/A, in examination-in-chief wherein he reiterated almost all the contents of reply filed by the respondent. He also tendered in evidence authority letter Ex. RW-1/B and special power of attorney Ex. RW-1/C. In cross-examination, he denied that the services of the petitioner have been terminated by the respondent and that the petitioner was doing the work of loading and unloading. He further denied that the petitioner is entitled for back-wages and seniority. He admitted that no notice to call back the petitioner had been issued. He expressed his ignorance that how many days the petitioner had worked with the company.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had left the job at his own and only wants to extract money from the respondent company as admitted by him in his cross-examination. At this stage, it would be relevant to reproduce the extract of his cross-examination, which reads as under:

“It is correct that I was asked to perform the duties of loading and unloading of Nitrogen Cylinders. It is also correct that I refused to do the aforesaid work.....It is correct that after this incident I left the premises. It is also correct that the respondent management asked me to join the duties and I joined the same on 31.10.2010. It is correct that when I left the premises, other workers have also left the premises with me..... It is correct that on 31.10.2010, I along-with other workers, left the company premises and thereafter I did not turn up to perform my duties. It is correct that during conciliation the respondent management asked me and other co-workers to resume the duties but I refused the same. It is correct that during the pendency of the present case, I was also asked to resume my duties but I refused to do the same. It is correct that I do not want to work with the company but want the money from the company.”

From the perusal of the cross-examination of the petitioner, it is clear that when the petitioner was asked to perform the duties of loading and unloading of nitrogen cylinders, he refused to do so and after that incident he left the premises. It has also been admitted by him that the respondent had asked him to join the duties and he joined the same on 31.10.2010 but on the same day he along-with other workers had left the premises and thereafter never turned up to perform his duties. He also admitted that he does not want to do any work with the respondent and only wants money from the respondent. He further admitted that he is working as daily waged worker. The respondent in its reply as well as RW-1 in his affidavit Ex. RW-1/A categorically stated that they had asked the petitioner to resume his duties during conciliation proceedings as well as during the pendency of the present case but he refused to do the same. Thus, from the perusal of evidence on record it has become clear that the respondent time and again had offered the petitioner to resume his duties but he refused to resume the same.

13. Therefore, in view of the entire evidence on record, it has become clear that the respondent never terminated the services of the petitioner rather he had left the job at his own and he only wants to extract money from the respondent. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

Issue no. 2

14. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue no. 3.

15. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed his claim petition pursuant to the reference made by the appropriate government

to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 4

16. The learned counsel for respondent contended that the petition filed by the petitioner is time barred. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. that:—*

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 4

17. During the course of arguments, the learned counsel for the respondent has not pressed the aforesaid issue, hence, the same is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 5th day of November, 2016.

(SUSHIL KUKREJA),

*Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla,
Camp at Solan.*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT SOLAN**

Ref. No. 34 of 2012.

Instituted on.14.6.2012.

Decided on 5.11.2016.

Rakesh Jaswal S/o Shri Baba Ram R/o 563/B Lekh Ram Colony, Vinta Road Pinjore,
Tehsil Kalka, District Panchkula, Haryana. *...Petitioner.*

Vs.

M/s Total Health Care, Sector-5, Taksal Parwanoo, Tehsil Kasauli, District Solan, HP
through its General Manager. *...Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Ms. Kumud Thakur, Advocate
vice csl. Shri Ashwani Kondal, Advocate.

For respondent : Shri Alok Bhardwaj, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of the services of Shri Rakesh Jaswal S/o Shri Baba Ram R/o 563/B Lekh Ram Colony, Vinta Road Pinjore, Tehsil Kalka, District Panchkula, Haryana by the Occupier/Factory Manager M/s Total Health Care Plot no.17 Ambota, Sector-5, Parwanoo, District Solan, HP w.e.f. 7.1.2010 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to?”

2. In nutshell, the case of the petitioner is that he was appointed as A.C Technician by the respondent on 2.7.2008 and that in the month of December, 2009, he was directed to do the work of loading and unloading but when the petitioner objected to the work assigned to him, the respondent started threatening him to face dire consequences and thereafter on 7.1.2010, his services had been terminated without assigning any reason and without giving one months' notice as prescribed under section 25-F of the Industrial Disputes act, 1947 (hereinafter referred to as Act). It is further stated that the petitioner approached the respondent on number of occasion for his reengagement but he was not allowed to enter the gate of the factory. On 19.1.2010, the petitioner issued demand notice claiming reinstatement along-with back-wages and all consequential benefits but when nothing was received by the petitioner from the Labour Commissioner, he approached the Hon'ble High Court and pursuant to order dated 4.5.2012 passed in CWP No. 2819/2012, the matter was referred to this Court. The petitioner was drawing a salary of ₹ 7,000/- per month at the time of his termination and also contributed towards EPF. Against this back-drop a prayer has been made that the petitioner be reinstated in service as fitter with seniority and continuity along-with back wages.

3. The respondent contested the claim by filing reply wherein preliminary objections had been raised qua maintainability of petition, abandonment of job, estoppel and that the petitioner had not approached the Court with clean hands. On merits, it has been denied that the respondent

threatened the petitioner at any point of time but it is submitted that he refused to do the assigned work and also argued and quarreled with the incharge of the department and left the premises with other co-workers. Thereafter, the respondent had written several letters to the petitioner for resuming duties and after that he came in the factory on 31.10.2010 for work but at 10:00 AM he left the company premises with other co-workers without any reason and without any cause and thereafter he never turned up. It is further asserted that the services of the petitioner had never terminated by the respondent but he abandoned the job at his own. It is denied that the petitioner approached the respondent for his re-engagement and that since the services of the petitioner have never been terminated, the respondent has no objection if he resume his duties. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder to the reply, the petitioner reaffirmed the allegations by denying those of the respondent.

5. Pleadings of the parties give rise to the following issues which were struck on 9.7.2013.

1. Whether the termination of the services of the petitioner w.e.f. 7.1.2010, without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ... *OPP*
2. If issue no.1. is proved in affirmative to what service benefits, the petitioner is entitled to? ... *OPP*
3. Whether this petition is not maintainable as alleged? ... *OPR*
4. Whether this petition is time barred as alleged? ... *OPR*
5. Whether the petitioner is estopped from filing this petition by his own acts, conduct etc.? ... *OPR*
6. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 No.

Issue no. 2 Becomes redundant.

Issue no. 3 No.

Issue no. 4 No.

Issue no. 5 Not pressed.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings*Issue no. 1.*

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated in utter violation of the provisions of the Act as neither any notice was served upon him nor he was paid any compensation.

9. On the other hand, learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who himself abandoned his job without intimation to the respondent. He further contended that the respondent is ready and willing to re-instate the petitioner but he does not want to work and he only wants to extract money from the respondent.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PA wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he admitted that he was asked to perform the duties of loading and unloading of nitrogen cylinders and that he refused to do the aforesaid work. He denied that he argued and quarreled with the incharge of the department. He admitted that the respondent management asked him to join his duties and he joined the same on 31.10.2010. He further admitted that on 31.10.2010 he left the premises other workers have also left the premises with him and thereafter he did not turn up. He further admitted that during conciliation proceedings the respondent management asked him and other co-workers to resume the duties but he refused the same and that during the pendency of the present case, he was also asked to resume his duties but he refused to do the same. He admitted that he does not want to work with the company but wants money from the company. He denied that his services were never terminated by the respondent He admitted that at present he was working on daily wages.

11. On the other hand, the respondent has examined one Shri Prashant Mathur Accounts Executive, who tendered his affidavit Ex. RW-1/A, in examination-in-chief wherein he reiterated almost all the contents of reply filed by the respondent. He also tendered in evidence authority letter Ex. RW-1/B and special power of attorney Ex. RW-1/C. In cross-examination, he denied that the services of the petitioner have been terminated by the respondent and that the petitioner was doing the work of loading and unloading. He further denied that the petitioner is entitled for back-wages and seniority. He admitted that no notice to call back the petitioner had been issued. He expressed his ignorance that how many days the petitioner had worked with the company.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had left the job at his own and only wants to extract money from the respondent company as admitted by him in his cross-examination. At this stage, it would be relevant to reproduce the extract of his cross-examination, which reads as under:

“It is correct that I was asked to perform the duties of loading and unloading of Nitrogen Cylinders. It is also correct that I refused to do the aforesaid work.....It is correct that after this incident I left the premises. It is also correct that the respondent management asked me to join the duties and I joined the same on 31.10.2010. It is correct that when I left the premises, other workers have also left the premises with me..... It is correct that on 31.10.2010, I along-with other workers, left the company premises and thereafter I did not turn up to perform my duties. It is correct that during conciliation the respondent management asked me and other co-workers to resume the duties but I refused the same. It is correct that during the pendency of the present case, I was also asked to resume my duties but I refused to do the same. It is correct that I do not want to work with the company but want the money from the company.”

From the perusal of the cross-examination of the petitioner, it is clear that when the petitioner was asked to perform the duties of loading and unloading of nitrogen cylinders, he refused to do so and after that incident he left the premises. It has also been admitted by him that the respondent had asked to him to join the duties and he joined the same on 31.10.2010 but on the same day he along-with other workers had left the premises and thereafter never turned up to perform his duties. He also admitted that he does not want to do any work with the respondent and only wants money from the respondent. He further admitted that he is working privately as mechanic. The respondent in its reply as well as RW-1 in his affidavit Ex. RW-1/A categorically stated that they had asked the petitioner to resume his duties during conciliation proceedings as well as during the pendency of the present case but he refused to do the same. Thus, from the perusal of evidence on record it has become clear that the respondent time and again had offered the petitioner to resume his duties but he refused to resume the same.

13. Therefore, in view of the entire evidence on record, it has become clear that the respondent never terminated the services of the petitioner rather he had left the job at his own and he only wants to extract money from the respondent. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

Issue no. 2

14. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue no. 3.

15. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed his claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 4

16. The learned counsel for respondent contended that the petition filed by the petitioner is time barred. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. that:—*

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under

the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 4

17. During the course of arguments, the learned counsel for the respondent has not pressed the aforesaid issue, hence, the same is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 5th day of November, 2016.

(SUSHIL KUKREJA),

*Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla,
Camp at Solan.*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).**

**Ref. No. 30 of 2014.
Instituted on 7.4.2014.
Decided on 9.11.2016.**

Ishwar Singh S/o Shri Fakir Singh and Jagat Singh S/o Shri Randhir Singh, through General Secretary Indo Farm Equipment Workers Union (Regd.) C/o J.C Bhardwaj, President HP AITUC HQ Saproon, Solan, HP. *...Petitioner.*

Vs.

M/s Indo Farm Equipment Ltd. EPIP, Phase-II Village Thana, P.O Baddi, District Solan, HP through its Factory Manager/Occupier. *...Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Shri H.R Thakur, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of the services of 1.) Shri Ishwar Singh S/o Shri Fakir Singh, ward no. 18, Ambedkar Nagar Janakpur Colony, VPO Kaithal, District Kaithal (HR), Token NO. 815 (2) Shri Jagat Singh S/o Shri Randhir Singh, Village Gauripur, P.O Keethlana, Tehsil & District Bhiwani (HR token no. 553 w.e.f. 9.9.2013, by the Employer/General Manager (HRD) M/s Indo Farm Equipment Ltd. EPIP, Phase-II Village Thana, P.O Baddi, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workmen is legal and justified? If not, what amount of back-wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In nutshell, the case of the petitioners is that Ishwar Singh and Jagat Singh were employed in the company during the month of May, 2006 and July, 2003 respectively as operator and mechanic on probation and thereafter within two years” time their services were confirmed and remained continued as such till 9.9.2013 when their services had been dispensed with illegally by way of removal after the application of illegal and malafide process in the name of domestic enquiry. Though the participation of the workmen in the enquiry was made impossible as no documents were supplied with the chargesheet or before commencement of the enquiry proceedings hence, in the absence of the documents which were foundation of the chargesheet the enquiries are vitiated and non-est in the eyes of law in both the cases. It is further stated that the chargesheets were prepared without any basis and as such were served on the petitioners without supplying any necessary documents because there was no foundation on which chargesheets were based and as such the same are defective and have no relevance for any purpose and after recording adverse findings, the appointment of enquiry officer was an empty formality to give color of authenticity to discharge order and the impugned order of removal to be held, suffers from serious infirmities and their chargesheets and the termination orders are liable to be quashed on the ground that the same are not sustainable either on facts or on law. It is further stated that the petitioners replied the chargesheets by re-butting each and every charge in detail but in spite of rebutting each charge, the management declared their reply as unsatisfactory without assigning any reason and thereafter the management ordered an enquiry without offering reasonable opportunity as the copies of documents on the basis of which the chargesheets were prepared, were not supplied to them. The respondent served a chargesheet upon the petitioner Shri Ishwar Singh for remaining absent, go slow of production and misbehavior whereas petitioner Jagat Singh was charged with the allegation of theft. The management under the colorable exercise of powers with malafide designs and to get rid of the workman from the service created ugly circumstances. It is also stated that and workman was not made known about the grounds about the minutes of drawing the conclusion about the theft and absenteeism and misbehavior and the management neither supplied/annexed the copies of the documents along-with the chargesheets on the basis of which chargesheets were prepared nor the list of witnesses was supplied. The certified standing orders were also not supplied by the management and no procedure was settled by the management for the purpose of enquiry and even the procedure adopted by the enquiry officer was pro-management. That the enquiry officer committed series of errors while conducting the enquiry as he had not properly explained the charges to the workmen and all the defence witnesses were not allowed by him. The enquiry officer did not provide the copies of documents prior to the deposition of the management witnesses and no opportunity of being heard was afforded by him to the workmen and the enquiry report was biased and even each and every minute of proceedings were not taken on record. The enquiry officer had not properly explained the charges to the workmen as the management did not produce the standing orders in the enquiry proceedings and there was denial of provision of natural justice as most vital opportunity was denied to the workmen and even the copies of documents were not provided to the workmen prior to the deposition of the management witnesses. The management being in a hot haste committed a number of lapses in acceptance of the enquiry reports in spite of the fact that the statements of the management witnesses were contradictory on the material points. It is also averred that the past service record of the petitioners was satisfactory and

there was no stigma on their part in any event during their service tenure and the management had ignored this aspect while ordering the termination of the petitioners and that the termination orders of the petitioners by the respondent was pre-planned under the conspiracy with malafide designs as the management always intended to dispense with the services of the petitioners and the domestic enquiry was merely eyewash. Against this back-drop a prayer has been made that the domestic enquiry conducted by the respondent company be declared null and void by setting aside the termination order and the petitioners be reinstated in service with all consequential service benefits along-with full back-wages.

3. The respondent contested the claim by filing separate replies wherein common preliminary objections had been raised qua concealment of material facts, maintainability and the petitioners have no cause of action. On merits, it has been asserted that petitioner Shri Jagat Singh was issued a chargesheet dated 16.3.2013 for his misconduct which falls under the category of major misconduct in terms of standing orders of the company and the same was duly replied by him vide reply dated 19.3.2013 but his reply was found unsatisfactory and a domestic enquiry was ordered vide letter dated 26.3.2013 and Shri Amit Kumar Gupta was appointed as an enquiry officer, who wrote a letter dated 10.4.2013 to Jagat Singh intimating him the date and time of enquiry proceedings and petitioner Jagat Singh attended the enquiry on the date and time fixed and the proper and fair enquiry was conducted by providing full opportunity to produce his defence. The enquiry officer after considering the evidence on record and documents produced before him submitted his report dated 25.7.2013 and a copy of the enquiry report was supplied to the petitioner Shri Jagat Singh which was received by him on 31.8.2013 for furnishing the comments within seven days but no reply was received from the petitioner Shri Jagat Singh. Hence, keeping in view the certified standing orders of the company, the services of the petitioner Shri Jagat Singh were terminated vide letter dated 9.9.2013 after complying with the principles of natural justice and a cheque of ₹ 45660/- was also sent to him which includes gratuity, bonus, leave encashment, due wages etc. In nutshell the averments made in the reply filed on behalf of petitioner Ishwar Singh is that he was issued a chargesheet dated 22.5.2013 for his misconduct which falls under the category of major misconduct as per the certified standing orders of the company and the same was replied by him vide reply dated 24.5.2013 which was found unsatisfactory and a domestic enquiry was ordered vide letter dated 29.5.2013 and Shri Aseem Sharma was appointed as an enquiry officer who wrote a letter dated 18.6.2013 to Shri Ishwar Singh intimating him the date and the time of the enquiry proceedings and the petitioner Shri Ishwar Singh attended the enquiry on the date and time fixed and a proper and fair enquiry was conducted against him. It is further asserted that full opportunity of being heard was afforded to him and he had produced his witness and also cross-examined the witnesses of the management. No objection was ever raised by the petitioner with respect to appointment of enquiry officer and the enquiry officer after considering the evidence on record submitted the enquiry report dated 17.7.2013 and a copy of the enquiry report was supplied to the petitioner Shri Ishwar Singh for furnishing the comments within seven days but no reply was received from the petitioner Shri Ishwar Singh. Hence, keeping in view the certified standing orders of the company, the services of the petitioner Shri Ishwar Singh were terminated vide letter dated 9.9.2013 after complying with the principles of natural justice and a cheque of ₹ 31930/- was also sent to him which includes gratuity, bonus, leave encashment, due wages etc. The respondent prayed for the dismissal of the claim petition.

4. By filing a common rejoinder to the replies, the petitioners reaffirmed their allegations by denying those of the respondent.

5. Pleadings of the parties give rise to the following issues which were struck on 4.1.2016.

6. Whether the termination of the services of the petitioners S/Shri Ishwar Singh and Jagat Singh w.e.f. 9.9.2013 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 as alleged? ...OPP

7. If issue no.1. is proved in affirmative to what relief of service benefits, the petitioners are entitled to? ... *OPP*

8. Whether the petitioners have concealed material facts from this Court as alleged? ... *OPR*

9. Whether the petition is not maintainable as alleged? ... *OPR*

10. Relief.

6. Besides having heard the AR for the petitioner and learned counsel for the respondent, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 Yes.

Issue no. 2 Entitled to reinstatement with seniority and continuity but without back-wages.

Issue no. 3 No.

Issue no. 4 No.

Relief. Reference answered in favour of the petitioners and against the respondent per operative part of award.

Reasons for findings

Issue no. 1.

8. To prove issue no.1, the petitioners stepped into the witness box as PW-1 & PW-2. PW-1 Shri Ishwar Singh deposed that vide appointment letter Ex. PW-1/A, he was engaged as operator during the month of May, 2006 and thereafter he was confirmed as operator on 1.10.2008 vide letter Ex. PW-1/B and vide chargesheet Ex. PW-1/C, the management had leveled allegations of absenteeism and go slow against him but no documents were supplied along-with the chargesheet. Ex. PW-1/D is the reply filed by him and the enquiry was conducted by the respondent management without supplying any documents during the enquiry and that no procedure was adopted during enquiry as copies of day to day enquiry proceedings were not supplied to him. Neither any show cause notice was issued to him nor enquiry report was supplied to him and even he had not received any amount. The management was harassing him due to his trade union activities as he had refused to withdraw the demand notice served by the union. In cross-examination, he denied that all the documents were supplied to him along-with the chargesheet and that proper opportunity was given to him to defend himself in the enquiry. He further denied that he was supplied the copy of enquiry report dated 31.3.2013 and that his services have been terminated legally after holding the proper enquiry. He also denied that a cheque in the sum of ₹ 31930/- was issued to him by the respondent with respect to gratuity, bonus and leave encashment.

9. PW-2 Shri Jagat Singh has stated that he was engaged as senior mechanic during the month of March, 2003 and thereafter he was confirmed. The management had leveled allegations of theft against him and issued a chargesheet Ex. PW-2/A. No documents were supplied along-with

the chargesheet and the reply filed by him to the chargesheet is mark A. He also deposed that the enquiry was conducted by the respondent management without supplying any documents during the enquiry and that no procedure was adopted during enquiry as copies of day to day enquiry proceedings were not supplied to him. Neither any show cause notice was issued to him nor enquiry report was supplied to him and even he had not received any amount. The management was harassing him due to his trade union activities as he had refused to withdraw the demand notice served by the union. In cross-examination, he denied that all the documents were supplied to him along-with the chargesheet and that proper opportunity was given to him to defend himself in the enquiry. He further denied that he was supplied the copy of enquiry report dated 25.7.2013 and that his services have been terminated legally after holding the proper enquiry. He also denied that a cheque in the sum of ₹ 45660/- was issued to him by the respondent with respect to gratuity, bonus and leave encashment.

10. On the other hand, the respondent has examined one Shri Chattar Singh, Manager (HR) who deposed that the petitioner Shri Ishwar Singh was working as operator w.e.f. the year, 2006 and chargesheet Ex. RW-1/A was issued to him for his misconduct which was duly received by him. Ex. RW-1/B is the reply filed by the petitioner Shri Ishwar Singh and since the reply was not found satisfactory, hence, domestic enquiry was conducted against him vide letter dated 29.5.2013 Ex. RW-1/C but the petitioner refused to receive the same and thereafter a copy was sent through registered post vide Ex. RW-1/D. Shri Asim Sharma was appointed as an enquiry officer who sent a letter dated 18.6.2016 Ex. RW-1/E which was received by the petitioner vide endorsement Ex. RW-1/F. He participated in the enquiry proceedings and he was represented by a co-worker Shri Sohan Singh in the enquiry. After the conclusion of the enquiry, the enquiry officer submitted his report Ex. RW-1/G vide which the charges against him stood proved and thereafter a show cause notice Ex. RW-1/H along-with enquiry report was issued to him. On the failure to submit reply, the services of petitioner Ishwar Singh were terminated vide letter Ex. RW-1/J. He further deposed that the petitioner Jagat Singh was working as senior mechanic w.e.f. the year, 2003 and a chargesheet Ex. RW-1/L was issued to him for his misconduct which was replied by him vide reply Ex. RW-1/M. Since, the reply filed by him was not found satisfactory, therefore, a domestic enquiry was conducted against him vide letter dated 26.3.2013 Ex. RW-1/N and Shri Amit Gupta was appointed as enquiry officer who informed him vide letter Ex. RW-1/O. He participated in the enquiry and he was represented by a co-worker Shri Sohan Singh. After the conclusion of the enquiry the enquiry officer submitted the report Ex. RW-1/P vide which the charges against him stood proved and thereafter a show cause notice Ex. RW-1/Q along-with enquiry report was sent to him. On the failure of the petitioner Shri Jagat Singh to submit the reply, his services were terminated vide letter Ex. RW-1/R. In cross-examination he denied that the chargesheets Ex. RW-1/A and Ex. RW-1/L were never served upon the petitioners and their signatures have been fabricated on the same. He denied that letters Ex. RW-1/C and Ex. RW-1/N were not served upon them. He denied that no enquiry officers were appointed and the petitioners were not informed by them. He further denied that show cause notices Ex. RW-1/H and Ex. RW-1/Q along-with the enquiry report were never served upon the petitioners. He also denied that the witnesses were not cross-examined by the petitioners. He admitted that one month's wages were not paid to the petitioners. He denied that demand notice raised by the petitioners was pending before the conciliation officer at the time of their termination. He denied that reference Ex. PY was pending at the time of the termination of the services of the petitioners.

11. The AR for the petitioners contended that there was a violation of principals of natural justice as the respondent management neither supplied the copy of documents on the basis of which the charges were prepared nor lists of witnesses were supplied to them. He further contended that no procedure was settled by the enquiry officers for the purpose of conducting the enquiries and day to day proceedings of enquires were not supplied to the petitioners. He also submitted that neither 2nd show cause notice was issued to the petitioners nor enquiry reports were supplied to

them as such a grate prejudice has been caused to the petitioners. He further urged that the enquiry officers had failed to appear in the witness box to prove the enquiry reports and even the enquiry proceedings have not been produced in the Court as a result of which both the enquiries stand vitiated.

12. On the other hand learned counsel for the respondent had submitted with vehemence that on the basis of proper and fair enquires, which had been conducted in accordance with the principles of natural justice, the charges leveled against the petitioners stood proved and therefore on having served separate notices upon them, their services were terminated. He further submitted that the petitioners had been served with the chargesheet along-with documents and they were afforded reasonable opportunity to be represented by defence assistant and further that the proper opportunity to cross-examine the witnesses were also given to them as such it cannot be said that the enquiry officers had not followed the proper procedure as per the principles of natural justice.

13. I have gone through the respective contentions of the AR for the petitioner and learned counsel for the respondent and also closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that both the petitioners were the employees of the respondent and both of them were terminated on 9.9.2013 vide termination letters Ex. RW-1/J and Ex. RW-1/R. It is also not disputed that both the petitioners have worked for 240 days in each calendar year. It is also the admitted case of the parties that chargesheet Ex. RW-1/A was issued to the petitioner Shri Ishwar Singh and chargesheet Ex. RW-1/L was issued to the petitioner shri Jagat Singh. The petitioner Ishwar Singh filed reply Ex. PW-1/D to the chargesheet and petitioner Jagat Singh filed reply mark A to the chargesheet but as the replies of the petitioners were not found satisfactory by the respondent therefore separate domestic enquiries were ordered to be conducted against both the petitioners. Shri Aseem Sharma was appointed as an enquiry officer in the case of Shri Ishwar Singh and Shri Amit Kumar Gupta, was appointed as an enquiry officer in the case of Shri Jagat Singh to enquire into the charges leveled against them and both the petitioners were represented through their co-worker Shri Sohan Singh and after the conclusion of the enquiries, both the enquiry officers submitted their reports Ex. RW-1/G (in respect of petitioner Shri Ishwar Singh) and Ex. RW-1/P (in respect of petitioner Shri Jagat Singh) wherein all the charges leveled against the petitioners stood proved and as such their services were terminated w.e.f. 9.9.2013. Feeling aggrieved the petitioners raised demand notice before the Conciliation Officer and after the failure of conciliation proceedings the present reference was sent by the appropriate government to this Court for adjudication.

14. Now, the question which arises for consideration is as to whether the domestic enquiries conducted against the petitioners are unfair and violative of principles of natural justice. It is a settled proposition of law that the technicalities of the evidence Act are not applicable in the domestic enquiry but at the same time it is also true that the domestic enquiry is not an empty formality and the principles of natural justice have to be followed. In *State of Haryana Vs. Rattan Singh* (1977) 2 SCC 491, it has been held by the Hon'ble Apex Court as under:

“In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence-not in the sense of the technical rules governing Court proceedings but in a fair

commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding”.

15. At the very out-set, I would like to point out that vide letter dated 29.5.2013 Ex. RW-1/C, the respondent management decided to initiate the enquiry against petitioner Shri Ishwar Singh and Shri Aseem Sharma was appointed as enquiry officer in order to conduct the enquiry in to the charges leveled against him. Similarly, vide letter Ex. RW-1/N, the respondent management decided to initiate the enquiry against petitioner Shri Jagat Singh and Shri Amit Kumar Gupta was appointed as enquiry officer in order to conduct the enquiry in to the charges leveled against him. However, neither Shri Aseem Sharma nor Shri Amit Gupta have been examined as witnesses by the respondent in support of its contention that the enquiries against the petitioners had been conducted in accordance with the principles of natural justice. Both the enquiry officers' i.e Aseem Sharma and Amit Gupta were the most material witnesses because only they could have stated as to what procedure was followed by them in order to conduct the enquiries against the petitioners. Both the petitioners i.e PW-1 and PW-2 have categorically deposed before this Court that they were not aware as to what had happened in the enquiries because no procedure was adopted and no day to day proceedings of enquiries were supplied to them during and after the enquiries. Had the respondent examined the enquiry officers, it could have been known as to what procedure the enquiry officers had followed in order to conduct the enquiry proceedings and also as to whether they have followed the principles of natural justice. In support of its case, the respondent had examined RW-1 Shri Chattar Singh, Manager HR who was also the presenting officer in both the enquiries. However, from his statement it is not proved as to what procedure was adopted by the enquiry officers and whether they have made known to the petitioners regarding the procedure which had been adopted by them to conduct the enquiries. Therefore, since the respondent has failed to examine the enquiry officers i.e S/Shri Aseem Sharma and Amit Gupta before this Court in order to prove the enquiry reports Ex. RW-1/G and Ex. RW-1/P, an adverse inference has to be drawn against the respondent. Moreover, the respondent has not brought on record the enquiry proceedings with respect to both the petitioners for the reasons best known to it. In the absence of enquiry proceedings on record, it cannot be said as to whether day to day proceedings of the enquiries were supplied to the petitioners or not and whether proper procedure was adopted by the enquiry officers by following the principles of natural justice. It was obligatory upon the respondent to have produced on record the enquiry proceedings which were conducted against the petitioners. However, for the reasons best known to the respondent, enquiry proceedings were not brought on record, hence, an adverse inference is drawn against the respondent for non-production of the enquiry proceedings. Even, no documents were supplied to the petitioners along-with chargesheets. Both the petitioners have stated in their deposition that no documents were supplied to them along-with the chargesheets. RW-1 Shri Chattar Singh also admitted in cross-examination that the documents were not supplied to the petitioners along-with the chargesheets. Since, the documents along-with the chargesheets have not been supplied to the petitioners a great prejudice has been caused to them on this aspect of the matter. Hence, for the failure of the respondent to have examined Shri Aseem Sharma and Amit Gupta, enquiry officers and for the failure of the respondent to have produced the enquiry proceedings of both the enquiries, I have no hesitation in holding that the respondent has miserably failed to prove on record that the enquiries have been conducted against the petitioners by following the principles of natural justice and also by affording proper opportunity of being heard to the petitioners to defend their case.

16. Therefore, keeping in view the aforesaid facts and circumstances of the case and also in view of my aforesaid discussion, I have no hesitation in holding that the enquiries conducted against the petitioners are against the principles of natural justice. Resultantly, both the enquiries conducted against the petitioners are hereby set aside and quashed.

17. The respondent could have led the evidence before this Court in order to prove the alleged acts of misconduct against both the petitioners. However, no such evidence has been led by the respondent. No witness has been produced by the respondent in order to prove the alleged acts of misconduct against both the petitioners before this Court. Therefore, in view of the fact that the enquiries against the petitioners have been set aside and quashed and in view of the fact that the respondent has failed to prove the alleged acts of misconduct against the petitioners before this Court, hence, it can safely be held that their termination w.e.f. 9.9.2013 was unlawful.

18. There is no dispute about the fact that the petitioners had completed more than 240 days in each calendar year, preceding their termination. As per the termination letter Ex. RW-1/J, the petitioner Shri Ishwar Singh was paid ₹ 31,930/- through cheque no. 309475 of Canara Bank as full & final payment. Similarly, vide termination letter Ex. RW-1/R, a sum of ₹ 45660/- through cheque no. 309476 of Canara Bank was paid to petitioner Shri Jagat Singh as full and final payment. However, the petitioners in their deposition have specifically stated that they have not received any amount. Moreover, the aforesaid amount pertains to the gratuity, bonus and leave encashment of the petitioners as per the suggestion given to the petitioners in their cross-examination by the learned counsel for the respondent. RW-1 also admitted in cross-examination that one month's wages were not paid to the petitioners. At this juncture, it would be relevant to reproduce section 25-F of the Act, which reads as under:

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

19. The provisions of section 25-F of the Act lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has not complied the conditions of section 25-F as enumerated in clause (a) to (c), precedent to the retrenchment of petitioner. In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union, the Hon'ble Apex Court has held as under:

“34.The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned

workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.”

20. In the present case also no evidence has been produced by the respondent to prove that the respondent had complied with the conditions as per clauses (a) to (c) of section 25-F of the Act. Therefore, it has become clear that the respondent had not complied with the conditions (a) to (c) of the section 25-F, which are mandatory in nature as such the termination of the services of the petitioners by the respondent was illegal and unjustified.

21. Therefore, in view of my forgoing discussion, I have no hesitation in holding that the services of the petitioner have been terminated illegally without following the provisions of Industrial Disputes Act, 1947. Hence, issue no.1 is decided in favour of the petitioners and against the respondents.

Issue no. 2

22. Since, I have held under issue no.1 above that the termination of services of the petitioners by the respondent without complying with the provisions of the Act is improper, illegal and unjustified, hence, the petitioners are held entitled to reinstatement in service with seniority and continuity.

23. Now, the question which arises for consideration, before this Court is as to whether the petitioners are entitled to full back wages as contended by the AR for the petitioners. In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

24. Moreover, the petitioners were under an obligation to prove by leading cogent evidence that they were not gainfully employed after the termination of their services. The initial burden is on the workman/employee to show that they were not gainfully employed as held by the Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that:

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

25. In the present case, the petitioners have failed to discharge their burden by placing any concrete material on record and by leading any cogent and satisfactory evidence that they were not gainfully employed after their termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioners are not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioners and against the respondent.

Issue no. 3.

26. In support of this issue, neither any arguments have been advanced nor any evidence has been led by the respondent which could go to show that the petitioners have concealed material facts from this Court. Hence, this issue is decided in favour of the petitioners and against the respondent.

Issue no. 4.

27. In support of this issue, no evidence has been led by the respondent which could go to show that this petition is not maintainable especially when the same was filed by the petitioners pursuant to reference sent by the appropriate government to this Court for adjudication. Therefore, by holding it to be maintainable, this issue is decided in favour of the petitioners and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioners succeeds and is hereby allowed with the result, the petitioners are ordered to be reinstated in service forth-with with seniority and continuity. However, the petitioners are not entitled to any back-wages and as such the reference is ordered to be answered in favour of the petitioners and against the respondent. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 9th day of November, 2016.

(SUSHIL KUKREJA),

*Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

**App. No. 11 of 2012.
Instituted on. 14.6.2012.
Decided on 23.11.2016.**

Hans Raj Bhardwaj S/o Shri Prabh Dayal R/o Village Sainj, Tehsil Sadar District Mandi,
HP. *...Petitioner.*

Vs.

1. Himachal Pradesh State Electricity Board Vidyut Bhawan, Shimla-171004 through its Secretary/Director Personnel.
 2. The executive Engineer, Construction Division no. V, HPSEB Jhakri, District Shimla, HP. (deleted vide order dated 31.8.2012)
 3. The Director (Personnel), Nathpa Jhakri Power Corporation, District Shimla, HP.
- ...Respondents.*

Claim petition on behalf of the petitioner

For petitioner : Shri Jeevesh Sharma, Advocate.

For respondent no.1 : Shri Ramakant Sharma, Advocate.

For respondent no.3 : Shri S.D Sharma, Advocate.

AWARD/ORDER

Briefly, the case of the petitioner is that being qualified steno, he was appointed as steno typist in the office of respondent no.2 on 6.3.1989 and the respondent no.1 was initially executing the Nathpa Jhakri Power Project and the entire administrative control was with the respondent no.1 and w.e.f. 1.8.1991 the respondent no.3 had taken over the administrative control of the Nathpa Jhakri Power Project along-with control of assets, liabilities and staff working in the Project, hence, the services of the petitioner were also stood transferred to respondent no. 3. It is further stated that the board paid the wages of labourer to the petitioner despite the fact that initially he was engaged as steno typist and even the board issued identity card to him where the designation has been shown as steno typist. The petitioner requested the respondent board to pay him equal pay for equal work but of no avail and on 25.5.1991, the respondent no.2 orally ordered the petitioner to work as labourer instead of steno typist and further asked him to go the fields in order to discharge the duties of labourer and that when the petitioner opposed the illegal order of the respondent board, his services had been terminated orally without issuing any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) and without paying retrenchment compensation and even the board has also violated the mandatory provisions of their own standing orders despite the fact that he had completed 240 days of service in each calendar year. It is also stated that the services of similar situated and junior persons had been retained by the respondents board and that his services had not been re-engaged despite repeated requests. Thereafter, the petitioner filed CWP no. 311/1992 before the Hon'ble High Court and vide order dated 4.12.1996, it has been ordered that the matter in dispute is covered by the provisions of the Administrative Tribunal, hence, the petitioner filed OA no. 750/1997 before the Administrative Tribunal which was later on transferred to Hon'ble high Court and treated as CWP (T) 4296 of 2008 and the same was decided on 20.10.2010 and liberty was granted to the petitioner to approach the appropriate forum for his grievances and thereafter the petitioner raised demand notice before the Labour-cum-conciliation Officer Shimla on 18.11.2010 but the Labour-cum-Conciliation Officer failed to send the failure report to the appropriate government, hence, the present petition has been filed directly before this Court under section 2-A of the Act. Against this back-drop a prayer has been made that the respondents be directed to reengage the petitioner on daily wage basis as steno typist at the same place and in the same capacity as he was working prior to his disengagement along-with all the consequential service benefits including full back-wages.

2. By filing separate reply, respondent no.1 contested the claim of the petitioner wherein various preliminary objections have been taken qua maintainability, barred by limitation, petition suffers from delay and laches, maintainability and that there is no legal or vested rights of the petitioner has been infringed or violated by the replying respondent. On merits, it has been asserted that the office of respondent no.2 was separately created by respondent no.1 for carrying out the works relating to the Nathpa Jhakri Power Project and on its constitution, all the assets and liabilities relating to the Nathpa Jhakri Power Corporation were transferred to the respondent no. 3 vide office order dated 31.7.1991 and since the office of respondent no.2 was created for the working of Nathpa Jhakri Project, hence, office of respondent no.2 along with staff and records etc. stood transferred to the Nathpa Jhakri Power Corporation (now SJVN Ltd.) therefore, the liability if any, relating to the said Project is to be considered by the respondent no.3 and not by the

respondent no.1. It is further asserted that the record of the case is in power and possession of the respondents no. 2 & 3 as all the assets and liabilities, offices staff and records stood transferred to respondent no. 2 & 3 w.e.f. 1.8.1991. It is also asserted that the petitioner as per his own showing had abandoned the job in the year, 1991 and even after the lapse of 23 years the petitioner cannot turn round and allege that his services were terminated illegally. The respondent no.1 prayed for the dismissal of the claim petition.

3. Before, I proceed further, it is important to mention here that vide order dated 31.8.2012, the name of respondent no.2 had been ordered to be deleted from the array of the respondents.

4. By filing separate reply, the respondent no.3 contested the claim of the petitioner wherein preliminary objection has been taken that the respondent no. 3 had not been instrumental either in engaging the petitioner or terminating/retranching his services as before 1.8.1991, all assets and liabilities of NJHEP were transferred to SJVN in pursuance to the MOU signed between Government of H.P and Ministry of Power, Government of India pertaining to execution of Nathpa Jhakri Project as joint venture of Government of India and Government of H.P and then the manpower was transferred to Nathpa Jhakri Project on "as is where is basis" w.e.f. 1.8.1991 but all daily wagers remained on the rolls of HPSEB and the petitioner was also on the rolls of HPSEB, whose services had been terminated on 25.5.1991 i.e before the assets and liabilities were transferred to the SJVN on 1.8.1991. On merits, it has been asserted that the services of the petitioner had been terminated by respondents no. 1 & 2 before the respondent no. 3 came into existence on 1.8.1991. The respondent prayed for the dismissal of the claim petition.

5. By filing separate rejoinders to the replies filed by respondents no.1 & 3, the petitioner reaffirmed his allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 26.9.2015.

- 1 Whether the termination of the services of the petitioner w.e.f. 25.5.1991 is in violation of the provisions of the Industrial Disputes Act, 1947 as alleged? ... *OPP*
2. If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? ... *OPP*
4. Whether the petition is not maintainable? ... *OPR*
5. Relief.

7. Besides having heard the Learned counsel for the parties, I have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

| | |
|--------------------|---|
| <i>Issue no. 1</i> | No. |
| <i>Issue no. 2</i> | Becomes redundant. |
| <i>Issue no. 3</i> | No. |
| <i>Relief.</i> | Petition dismissed per operative part of award/order. |

Reasons for findings*Issue no. 1.*

9. The learned counsel for the petitioner contended that initially the petitioner was appointed as steno typist on daily wages basis but he was being paid the wages of labourer by the respondents and his services were illegally terminated without complying with the provisions of the Act as neither any notice was issued to him nor he was paid compensation despite the fact that he had completed more than 240 days in each calendar year. He further contended that juniors to the petitioner are still working with the respondents.

10. On the other hand, Ld. counsel for respondent no.1 contended that the services of the petitioner had never been terminated by respondent no.1 as all the assets and liabilities of the office/works relating to Nathpa Jhakri Power Project stood transferred to the respondent no.3 and the services of the petitioner stood transferred to respondent no.3 as such respondent no.1 has no concern with the termination of the services of the petitioner.

11. It has been contended by the learned counsel for respondent no.3 that the petitioner was on the rolls of HPSEB, whose services had been terminated on 25.5.1991 before the assets and liabilities were transferred to SJVN on 1.8.1991, therefore, the question of termination of services of petitioner by respondent no.3 does not arise at all.

12. To prove his case, the petitioner has appeared into the witness box as PW-1 to depose that as per Ex. PW-1/A, he had done the diploma in Hindi Stenography from the Industrial Training Institute Mandi in the year, 1985 and on 6.3.1989, he was engaged as steno –typist on daily wages basis by the respondent no.1 and as such he was deputed in the office of Executive Engineer, Construction Division no.5 HPSEB Jhakri District Shimla. He was working directly under the control of HPSEB till 6.8.1991. He was being paid the salary of beldar instead of salary of steno typist. W.e.f 1.8.1991, the control of his office was transferred to Nathpa Jhakri Power Corporation (respondent no.3) and in the month of August, 1991, the respondents directed him to work as labourer in the field but he told them that since he was appointed as steno typist, he may be given the work of steno typist and thereafter his services had orally been terminated by the respondents without giving any notice and compensation. Ex. PW-1/A-1 is his identity card issued by the respondents whereby his designation has been shown as steno typist. He requested for his re-engagement but he was not re-engaged. He had completed 240 working days in each calendar year and the persons who were engaged after him, their services have been regularized by the respondents. He also filed a CWP No. 311/1992 before the Hon'ble High Court in the year, 1992 which was dismissed on the point of jurisdiction and liberty was granted to him to file the same at appropriate forum and then he approached the Administrative Tribunal and on the closure of the Tribunal, his case was transferred to Hon'ble High Court and the same was decided on 20.10.2010 by giving direction to him to approach the Labour Court in accordance with law. Thereafter, he raised the demand notice Ex. PW-1/B on 18.11.2010 and on 20.11.2010 the same was sent through registered post Ex. PW-1/C to the respondents. He be reinstated in service on the same post with seniority and continuity along-with back-wages. In cross-examination, on behalf of respondent no.1, he admitted that he was engaged on 6.3.1989 at Division no.5 and worked till 25.8.1991 as per mandays chart mark X-1. He further admitted that NJPC and State Electricity Board was a joint venture till 31st July, 1991 and thereafter the entire control was transferred to NJPC. He denied that he was engaged by NJPC and that his services had been terminated by NJPC and HPSEB had nothing to do with his services. He admitted that the claim petition was filed by him in the month of May, 2012 after a gap of 12 years. When cross-examined on behalf of respondent no.3, he admitted that he was engaged by HPSEB and no appointment letter was issued to him regarding his appointment as steno typist. He further admitted that no date of issue is mentioned in identity card Ex. PW-1/A-1 and on 25.5.1991 his services were orally terminated by HPSEB.

13. On the other hand, the respondent no.1 has examined RW-1 Shri A.K Sharma, Superintending Engineer, HPSEBL, who has stated that the petitioner was appointed as beldar w.e.f. 6.3.1989 and worked till 25.8.1991 as per mandays chart mark X-1. He had never completed 240 days in each calendar year. Electricity Board and NJPC (now SJVN) was in joint venture upto 31.7.1991 and vide order no. 81 dated 31.7.1991 mark R-1 the entire control of the work and staff shall vest with NJPC w.e.f. 1.8.1991 on "as is where is basis". The services of the petitioner were also transferred to NJPC and he worked upto 25.8.1991 and the HPSEB is not liable for giving any relief to the petitioner. In cross-examination, on behalf of respondent no.3, he admitted that the staff who was working till 31.7.1991 was transferred to NJPC. He denied that the office of Executive Engineer Construction Division no.5 HPSEB was created by the electricity board. He admitted that the HPSEB was executing the work of NJPC project till 31.7.1991. He denied that the petitioner was never transferred to NJPC. When cross-examined on behalf of petitioner he admitted that the petitioner was engaged in the office of Nathpa Jhakri Construction Division no. 5 NJPC Jhakri. He denied that the petitioner was initially engaged at the post of steno- typist in the year, 1989 and that as per Ex. PW-1/A-1, the petitioner was engaged as steno typist. He admitted that in the year 1989, the construction division no.5 was directly under the control of HPSEB till 31.7.1991. He denied that similar situated persons are still working with the electricity board.

14. On behalf of respondent no.3, RW-2 Ms. Neha Thakur, Senior Officer (HR) has stated that Nathpa Jhakri Project was initially executed by HPSEB and in May, 1988, a joint venture of NJPC was formed with the Central Government and Government of HP. The joint venture was never formed between HPSEB and NJPC and in the year, 1991 MOU was executed between Government of India and Government of HP for execution of Nathpa Jhakri Power Project as joint venture and the staff was transferred to NJPC (now SJVNL) from HPSEB on 1.8.1991 and as per the petition filed by the petitioner, his services were terminated on 25.5.1991. The services of the petitioner were never transferred to their office and his service record not reached ion their office. The mandays chart mark X-1 was never issued by their office. In cross-examination on behalf of respondent no.1 she admitted that as per mark R-1, the staff was transferred on "as is where is basis" to NJPC. She denied that the services of the petitioner were also transferred to NJPC on 1.8.1991 and that his services were terminated by NJPC.

15. I have gone through the respective contentions of the learned counsel for the parties and also closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that vide office order dated 31.7.1991, mark R-1, the control of works, assets, liabilities and staff working for Nathpa Jhakri Project (NJPC) stand vested with Nathpa Jhakri Power Corporation with effect from 1.8.1991 on "as is where is basis". In his claim petition, which is supported with his affidavit, the petitioner has averred that he was initially engaged on 6.3.1989 and his services were orally terminated on 25.5.1991. However, while appearing in the witness box, before this Court, he deposed on oath that he worked till 6.8.1991 and in the month of August, 1991, his services had orally been terminated. In cross-examination on behalf of respondent no.1 (HPSEB), he admitted that he had worked till 25.8.1991 as per mandays chart mark X-1. However, when cross-examined on behalf of respondent no.3 (NJPC), he stated that on 25.5.1991, his services were orally terminated by HPSEB. It is pertinent to mention here that in view of the office order mark R-1, wherein it was ordered that the staff shall vest with NJPC w.e.f. 1.8.1991, the aforesaid date is very important and goes to the root of the case. However, on one hand the petitioner in his pleading averred that his services were terminated on 25.5.1991 whereas on the other hand he is deposing before this Court that his services were terminated on 25.8.1991. Therefore, in view of the aforesaid back-ground, it was for the petitioner to specifically plead and prove that on which date his services were terminated. However, no record has been produced or got summoned by the petitioner to prove the date on which his services were allegedly terminated. The witness of HPSEB i.e RW-1 stated in cross-examination that the original record of the mandays chart of the petitioner is lying in the office of NJPC and no record is available in their

office whereas the witness of NJPC i.e RW-2 deposed that the service record of the petitioner never reached their office and no record pertaining to the mandays chart of the petitioner is available in their office. Therefore, the material evidence relating to the date of termination of the services of the petitioner is neither available in the office of respondent no.1 (HPSEB) nor in the office of respondent no.3 (NJPC). Admittedly, the petitioner has raised the present dispute on 18.11.2010 as is evident from the demand notice, after a lapse of about nineteen years due to which the material evidence regarding the date of termination of services of the petitioner is un-available.

16. The burden was upon the petitioner to prove that on which date his services were terminated, however, he has failed to discharge his burden by leading any satisfactory evidence. Hence, in the absence of any cogent and satisfactory evidence on record, it cannot be said that on which date the services of the petitioner were terminated. In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. Mohan Lal, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

“19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

17. In the instant case also admittedly the petitioner had raised the industrial dispute after lapse of about nineteen years without any plausible explanation and due to the delay the material evidence is also not available as such in the absence of any original record, it cannot be ascertained as to on which date the services of the petitioner were terminated and which of the respondents had terminated his services. Since, the petitioner has concealed true and material fact from this Court regarding the date of his termination, he is not entitled for any relief on this ground alone.

18. The further case of the petitioner is that he had worked with the respondents continuously and completed 240 working days in every calendar year and also in twelve calendar months preceding his termination but when regard is given to entire evidence on record, except for the bald statement of the petitioner there is nothing on record which could show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. It is by now well settled that the burden of proof lies on the workman to show that he had worked continuously for 240 days in twelve calendar months preceding his termination. In 2009 (120) FLR 1007 in case titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others, the Hon'ble Supreme Court has held as under:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

In AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the Hon'ble Supreme Court has held that:—

“19..... In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination. What

we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service.....”

A bare perusal of the extract of the judgment produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged by the workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination and as such for the failure of the petitioner to have led cogent and satisfactory evidence in this regard, no protection of section 25-F can be granted to the petitioner. Thus, having regard to the entire evidence on record and on the strength of the above cited rulings, it can safely be concluded that the petitioner has failed to prove on record that he has completed 240 working days in twelve calendar months preceding his termination.

19. Thus, keeping in view the entire evidence on record, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, issue no.1 is decided in favour of the respondents and against the petitioner.

Issue no. 2.

20. Since, the petitioner has failed to prove issue no.1, this issue become redundant.

Issue no. 3.

21. In support of this issue, no evidence was led by the respondents. Moreover, I find nothing wrong with this petition which is perfectly maintainable. Accordingly, issue no.3 is decided in favour of petitioner and against the respondents.

Relief.

As a sequel to my findings on the aforesaid issues, the application filed by the petitioner fails and is hereby dismissed. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 23rd Day of November, 2016.

(SUSHIL KUKREJA),

*Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).**

App. No. 73 of 2014.

Instituted on. 10.9.2014.

Decided on 16.11.2016.

Dev Raj S/o Shri Daulat Ram R/o Village Nalawan, P.O Kadiun, Tehsil Rohroo District
Shimla, HP. *...Petitioner.*

Vs.

6. The HP State Electricity Board Vidyt Bhawan, Shimla-4 through its Secretary.
7. The Executive Engineer, HPSEB Electric Division Jubbal, District Shimla, HP.
8. The Sub Divisional Officer, HPSEB Electric sub Division, Baghi, Tehsil Kotkhai District Shimla, HP. ...Respondents.

Claim petition under the Industrial Disputes Act, on behalf of the petitioner

For petitioner : Shri Harish Chauhan, Advocate.
For respondents : Shri Sudhir Negi, Advocate vice
 Shri Ramakant Sharma, Advocate.

AWARD/ORDER

Briefly, the case of the petitioner is that he was engaged as beldar on daily wages basis with Baghi Electric Sub Division in the month of March, 1990 and worked as such upto April, 1993 on which date his services had been terminated without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as Act) or Standings Orders of HPSEB. The petitioner had performed his duties with zeal and devotion to the best of his capabilities and to the entire satisfaction of all his superiors and even he performed continuous services of minimum 240 days in each calendar year despite the fact that initially he had been given notional breaks in his service. The action of the respondent in terminating the services of the petitioner is illegal and instead of regularizing his services, the same were terminated. It is further stated that the petitioner had preferred a demand notice to the respondents which was taken up for conciliation but due to adamant attitude of respondents the conciliation failed. Against this back-drop a prayer has been made for his reinstatement with all consequential service benefits including back-wages.

2. By filing reply, respondents contested the claim of the petitioner wherein various preliminary objections have been taken qua misrepresentation of the things, that the petitioner had never completed 240 days in each calendar year as he was engaged for specific work and on completion of the same, he was automatically relieved from his services, that the petitioner raised the industrial dispute after lapse of 20 years and estoppel. On merits, it has been asserted that the petitioner did not acquire the status of workman as defined under the Act as he had worked for 222 days only during his entire working period from 26.3.1990 to 25.4.1993 and never completed 240 days of un-interrupted service. It is further asserted that the petitioner was initially engaged on daily wages as beldar on 26.3.1990 under Electric Sub Division Baghi and his services had been disengaged on 25.4.1993 after the completion of work against which he was engaged. He was engaged for specific period for specific work and on the completion thereof the services of the petitioner had been dispensed with and since he had not completed 240 days in any calendar year, hence, no notice of retrenchment or compensation was payable to him under the Act. It is also asserted that the petitioner was not a sincere worker and used to remain absent from his duties and no junior person to him had been retained and even no fresh hands were engaged after his relieving as the respondent is observing the principles of "first come last go". The respondents prayed for the dismissal of the claim petition.

3. By filing rejoinder the petitioner reaffirmed his allegations by denying those of the respondents.

4. Pleadings of the parties gave rise to the following issues which were struck on 10.11.2015.

- 2 Whether the retrenchment of the petitioner w.e.f. April, 1993 is illegal and unjustified as alleged? ... *OPP*
3. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ... *OPP*
4. Whether the petition is time barred as alleged? ... *OPR*
5. Whether the petitioner is estopped from raising industrial dispute due to his own acts and conduct? ... *OPR*
6. Relief.

5. Besides having heard the Learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

| | |
|--------------------|---|
| <i>Issue no. 1</i> | No. |
| <i>Issue no. 2</i> | Becomes redundant. |
| <i>Issue no. 3</i> | No. |
| <i>Issue no. 4</i> | Not pressed. |
| <i>Relief.</i> | Petition dismissed per operative part of order/award. |

Reasons for findings

Issues no. 1

7. The learned counsel for the petitioner contended that the services of the petitioner were illegally terminated without complying with the provisions of the Act as neither any notice was issued to him nor he was paid any compensation despite the fact that he had completed more than 240 days in each calendar year. He further contended that juniors to the petitioner are still working with the respondents and even the respondents have engaged fresh hands after the termination of the services of the petitioner.

8. On the other hand, Ld. counsel for respondents contended that the services of the petitioner had been engaged for specific work and for specific period and on the completion of the same, his services stood automatically dispensed with. He further contended that the petitioner never completed 240 days in any calendar year and neither any junior to the petitioner had been retained nor the respondents had engaged fresh hands.

9. To prove his case, the petitioner examined three PWs. The petitioner himself appeared into the witness box as PW-1 to depose that he was engaged in the month of March, 1990 and worked till April, 1993 as beldar on daily wages basis with the Baghi Electric Sub Division, HPSEB Kothkhai. He had completed 240 working days in each calendar year and regarding his service, no record was maintained by the respondents. He was given frictional breaks by the respondents and there was sufficient work and funds available with the respondents. After his

termination, he approached the respondents for his re-engagement orally as well as in writing but of no avail and thereafter he applied under RTI Act about his service record which is Ex. PW-1/A and then he raised demand notice Ex. PW-1/B which was sent through registered post vide receipt Ex. PW-1/C. In cross-examination he denied that he had not worked continuously and had not completed 240 days in each calendar year and that he was engaged for specific work and on completion of the same, he was automatically relieved from services. He admitted that he had filed the claim after a gap of 20 years. He expressed his ignorance to give the name of the persons who were junior to him and retained by the respondents. He denied that he used to remain absent from the work.

10. PW-2 Shri Shyama Nand, Senior Assistant has stated that the muster roll of the petitioner has been destroyed as per office order dated 4.2.2015, mark A. In cross-examination, he stated that as per record the petitioner was appointed as beldar in the year, 1990 and worked till April, 1993 and after the termination of the petitioner no fresh hands have been engaged by the board and no juniors were retained.

11. PW-3 Shri Rattan Dass, Senior Assistant has stated that as per office order Ex. PW-3/A, the muster rolls from the year, 1992 to 2000 have been destroyed and Ex. PW-3/B is the copy of standing orders of HPSEB.

12. On the other hand, the respondents examined one Shri Suresh Pal, Assistant Engineer, who has stated that the petitioner was engaged on 26.3.1990 and he worked upto 25.4.1993 and he had worked only for 222 days during his entire tenure of service. He had never completed 240 days in any calendar year and neither any junior to the petitioner had been retained nor any fresh hands have been engaged after the termination of the services of the petitioner. In cross-examination, he denied that a notice is required to be issued in every case prior to the termination of the services. He denied that the petitioner had completed 240 days in each calendar year. He further denied that fresh hands have been engaged after the termination of the services of the petitioner. He admitted that no notice was issued to the petitioner prior to his termination.

13. I have gone through the respective contentions of the learned counsel for the parties and also closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked as daily rated beldar with the respondents from 26.3.1990 till 25.4.1993. No, doubt the case of the petitioner is that he had worked with the respondent till 25.4.1993 and completed 240 working days in each calendar year and also in twelve calendar months preceding his termination but when regard is given to entire evidence on record, except for the bald statement of the petitioner there is nothing on record which could show that the petitioner had completed 240 working days in each calendar year and in twelve calendar months preceding his termination. No evidence has been led by the petitioner that he has completed 240 days in each calendar year rather he admitted in cross-examination that he did not have any record regarding the fact that he had worked continuously. It is by now well settled that the burden of proof lies on the workman to show that he had worked continuously for 240 days in twelve calendar months preceding his termination. In 2009 (120) FLR 1007 in case titled as *Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others*, the Hon'ble Supreme Court has held as under:

"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."

14. In AIR 2006 S.C. 110 case titled as *Surindernagar District Panchyat V/s Dayabhai Amar Singh*, the Hon'ble Supreme Court has held that:—

"19..... In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination. What

we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service.....”

A bare perusal of the extract of the judgment produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged by the workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination.

15. From the perusal of entire evidence on record it is abundantly clear that the petitioner had not completed 240 working days in each calendar year and in twelve months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner. Thus, having regard to the entire evidence on record and on the strength of the above cited rulings, it can safely be concluded that the petitioner has failed to prove on record that he has completed 240 working days in twelve calendar months preceding his termination. It is also the case of the petitioner that the respondents have violated the provisions of Rule 14 (ii) of Standing Orders of HPSEB Ex. PW-3/B as no ten days' notice was given to him before his termination. However, in cross-examination, RW-1 stated that the aforesaid standing orders have been issued under the provisions of Industrial Employment (Standing Order) Act, 1946 and as per the notification of the state government, the aforesaid Act is not applicable to the board under which the standing orders have been issued. Vide notification dated 11.9.1985, the establishment of HPSEB has been exempted from all the provisions of Industrial Employment (Standing Order) Act, 1946. Moreover, it has been held by our own Hon'ble High Court in *Executive Engineer Joginder Nagar Vs. Sanju S/O Sh. Gantu Ram, Vill Dalana, P.O. Ballhjoli, Tehsil. Jogindernagar, Distt. Mandi H.P. & Presiding Officer, Labour Court-Cum-Industrial Tribunal, Dharamsala in CWP No. 1383 of 2005* that HPSEB shall be exempted from all the provisions of Standing Orders Act, and thereafter 10 days' notice is not required to be given under Standing Orders to the employee. The relevant portion of the aforesaid judgment reads as under:—

“The HP State Electricity Board shall be exempted from all the provisions of standing Orders Act, and thereafter no 10 days notice is required to be given under Standing Orders to the employee. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee.”

Therefore, in view of the notification dated 11.9.1985 and also in view of the judgment of our own Hon'ble High Court, it is abundantly clear that ten days' notice was not required to be served upon the petitioner under Standing Orders before his termination.

16. The other plea of the petitioner is to this effect that the fresh hands have been engaged and the persons junior to him have been retained by the respondents. However, there is no cogent evidence placed on record by him to this effect rather he admitted in cross-examination that he could not give the name of the persons who were junior to him and retained by the respondents. The petitioner was under an obligation to prove by leading cogent evidence in this regard but no evidence has been led by the petitioner to prove that fresh hands have been engaged and persons junior to him were retained. Therefore, in the absence of any cogent and satisfactory evidence on record it cannot be held that the provisions of section 25-G & H of the Act are attracted to the present case and any hostile discrimination was meted out against the petitioner.

17. Thus, in view of the law laid down (supra) and my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner w.e.f April, 1993 by the respondents is not illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondents and against the petitioner.

Issue no. 2.

18. Since, the petitioner has failed to prove issue no.1, this issue has become redundant.

Issue no. 3.

19. The learned counsel for respondents contended that the petition filed by the petitioner is time barred. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. that:-*

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue no. 4.

20. During the course of arguments, this issue was not pressed by the learned counsel for the respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my findings on the aforesaid issues, the application filed by the petitioner fails and is hereby dismissed. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 16th Day of November, 2016.

(SUSHIL KUKREJA),

*Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.*

No. Revenue Stamp (F)6-/80-III
Government of Himachal Pradesh
Revenue Department (Stamp-Regn.)

From:

Addl. Chief Secy. (Revenue) to the
Government of Himachal Pradesh.

To

1. The Registrar General, H.P High Court, Shimla.
2. The Finance Commissioner (Appeal) to the Govt of Himachal Pradesh.
3. The Divisional Commissioners, Shimla/Mandi/Kangra at Dharamshala, H.P
4. The Director of Land Records (IGR), H.P , Shimla-09.
5. The Director, Revenue Training Institute, Jogindernagar, Distt. Mandi, Himachal Pradesh.
6. The Settlement Officers, Shimla/Kangra (H.P).
7. All the Deputy Commissioners in H.P.
8. All the Tehsildar/Naib Tehsildars in H.P

Shimla-2, the 14th February, 2017.

Subject :—Regarding amendment in the H.P Court Fees Act, 1968.

Sir,

I am directed to say that a new section 42A has been inserted after section 42 of the Himachal Pradesh Court Fees Act, 1968 by the Himachal Pradesh Court Fees (Amendment) Ordinance, 2017 (Ordinance No. 1 of 2017). The amendment has been notified by the Law Department vide Notification No. L.L.R.-D.(6)-1/2017-Leg. dated 02-02-2017. The copy of said e-Gazette Notification is enclosed.

It is therefore, requested that the provisions of the aforesaid Ordinance may kindly be implemented to achieve its objective.

Encls: As Above. —

Yours faithfully,
(PARVEEN KUMAR TAAK),
Deputy Secy. (Revenue) to the
Govt. of Himachal Pradesh.
Tel. No.-0177-2628504.

विधि विभाग

अधिसूचना

शिमला—2, 2 फरवरी, 2017

संख्या: एल0एल0आर0—डी0(6)—1/2017—लेज.—हिमाचल प्रदेश के राज्यपाल, भारत के संविधान के अनुच्छेद 213(1) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 31-01-2017 को अनुमोदित हिमाचल

प्रदेश न्यायालय फीस (संशोधन) अध्यादेश, 2017, (2017 का अध्यादेश संख्यांक 1) को संविधान के अनुच्छेद 348 (3) के अधीन उसके अंग्रेजी प्राधिकृत पाठ सहित हिमाचल प्रदेश ई-राजपत्र में प्रकाशित करते हैं।

आदेश द्वारा,
(डा० बलदेव सिंह),
प्रधान सचिव (विधि)।

2017 का हिमाचल प्रदेश अध्यादेश संख्यांक 1

हिमाचल प्रदेश न्यायालय फीस (संशोधन) अध्यादेश, 2017

भारत गणराज्य के अड़सठवें वर्ष में हिमाचल प्रदेश के राज्यपाल द्वारा प्रख्यापित।

हिमाचल प्रदेश न्यायालय फीस अधिनियम, 1968 (1968 का अधिनियम संख्यांक 8) का और संशोधन करने के लिए अध्यादेश।

हिमाचल प्रदेश विधान सभा सत्र में नहीं है और हिमाचल प्रदेश के राज्यपाल का समाधान हो गया है कि ऐसी परिस्थितियां विद्यमान हैं, जिनके कारण उनके लिए तुरन्त कार्रवाई करना आवश्यक हो गया है;

अतः हिमाचल प्रदेश के राज्यपाल, भारत के संविधान के अनुच्छेद 213 के खण्ड (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित अध्यादेश प्रख्यापित करते हैं :-

1. **संक्षिप्त नाम.**—इस अध्यादेश का संक्षिप्त नाम हिमाचल प्रदेश न्यायालय फीस (संशोधन) अध्यादेश, 2017 है।

2. **नई धारा 42क का अन्तःस्थापन.**—हिमाचल प्रदेश न्यायालय फीस अधिनियम, 1968 की धारा 42 के पश्चात् निम्नलिखित नई धारा अन्तरुस्थापित की जाएगी, अर्थात् :—

“42क” राज्य सरकार द्वारा या उसकी ओर से न्यायालय के समक्ष दायर किए जाने वालेवादों, अपीलों, पुनरीक्षण आदि से सम्बन्धित विशेष उपबन्ध.—इस अधिनियम के किन्हीं अन्य उपबन्धों में किसी बात के होते हुए भी, जहां राज्य सरकार द्वारा या उसकी ओर से या इसके अधिकारियों द्वारा उनकी शासकीय हैसियत से किसी न्यायालय के समक्ष कोई वाद, अपील, पुनरीक्षण, पुनर्विलोकन दायर किया जाता है या अन्य अभिवचन या दस्तावेज प्रस्तुत किए जाते हैं तो इस अधिनियम के उपबन्धों के अधीन ऐसे वाद, अपील, पुनरीक्षण, पुनर्विलोकन या अन्य अभिवचनों या दस्तावेजों की बाबत कोई न्यायालय फीस प्रभार्य नहीं होगी।”।

(आचार्य देवव्रत)
राज्यपाल।

(डा० बलदेव सिंह)
प्रधान सचिव (विधि)।

शिमला :
तारीख : 31-01-2017.

H.P. Ordinance No. 1 of 2017

**THE HIMACHAL PRADESH COURT FEES (AMENDMENT)
ORDINANCE, 2017**

Promulgated by the Governor of Himachal Pradesh in the Sixty-eighth Year of the Republic of India.

An Ordinance further to amend the Himachal Pradesh Court Fees Act, 1968 (Act No. 8 of 1968).

WHEREAS the Legislative Assembly of Himachal Pradesh is not in session and the Governor of Himachal Pradesh is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Himachal Pradesh is pleased to promulgate the following Ordinance :—

1. Short title.—This Ordinance may be called the Himachal Pradesh Court Fees (Amendment) Ordinance, 2017.

2. Insertion of new section 42A.—After section 42 of the Himachal Pradesh Court Fees Act, 1968, the following new section shall be inserted, namely:—

“42A. Special provision regarding suits, appeals, revision etc. filed by or on behalf of the State Government before the Court.—Notwithstanding anything contained in any other provisions of this Act, where a suit, appeal, revision, review or other pleadings or documents is filed or presented by or on behalf of the State Government or its officers in their official capacity before any Court, no court fee shall be chargeable in respect of such suit, appeal, revision, review or other pleadings or documents under the provisions of this Act.”.

(ACHARYA DEVVRAT)
Governor.

(DR. BALDEV SINGH)
Pr. Secretary (Law).

SHIMLA:
Dated....., 2017.

DEPARTMENT OF FOOD CIVIL SUPPLIES & CONSUMER AFFAIRS, HP SHIMLA-9**NOTIFICATION***Dated, the 29th December, 2016*

No.Khadya-Ni-8-7(FPS)/89-Main-VII -21042-21082.—In exercise of the powers vested in me under sub Clause 11 of Clause 7 of the HP Specified Articles (Regulation of Distribution) Order 2003, the timings for opening and closing of Fair Price Shops under Targeted Public Distribution System in all districts of Himachal Pradesh are hereby fixed as under in public interest:—

- | | |
|-------------------|--|
| 1. Working hours- | 10.00 AM to 1.00 PM |
| 2. Lunch Hours- | 1.00 PM to 2.00 PM |
| 3. Working Hours- | 2.00 PM to 6.30 PM (During Summer) 2.00 PM to 6.00 PM (During Winter) |

The Fair Price Shops will remain closed on every Monday.

The Fair Price Shop holder shall have to display above timings on Notice Board, displayed in Fair Price Shop premises. Fair Price Shop can be closed under unavoidable circumstances only, after displaying reasons on the Notice Board for the information of general consumers. The Fair Price Shop holder shall also have to give prior and proper intimation about the reasons for closure of Fair Price Shop to concerned Inspector, Food, Civil Supplies & Consumer Affairs or the concerned Distt. Controller, Food, Civil Supplies & Consumer Affairs.

These orders shall come into force with immediate effect.

By order,
Sd/-

*Director,
Food, Civil Supplies & Consumer Affairs, Shimla-9, H.P.*

LANGUAGE, ART & CULTURE DEPARTMENT**NOTIFICATION***Shimla-171002, the 7th February, 2017*

No. LCD-B(3)-3/2017.—The Governor, Himachal Pradesh, on the recommendations of the Departmental Promotion Committee, is pleased to order the promotion of Sh. Praveen Singh Mankotia, District Language Officer to the post of **Assistant Director (Language)**, Class-II, (Gazetted) in the pay scale of Rs. 10300-34800+5000 (Grade Pay) on regular basis with immediate effect.

2. Sh. Praveen Singh Mankotia, Assistant Director (Language) shall remain on probation for two years from the date of issue of these orders.

3. The above officer shall have to exercise his options under FR-22 read with rule 11 of Himachal Pradesh Civil Services Pay (Revise) Rules, 2009 for the purpose of fixation of his pay against the post of Assistant Director (Language) within a period of one month from the date of issue of these orders.

4. The Governor, Himachal Pradesh is further pleased to order the posting of Sh. Praveen Singh Mankotia on his promotion in the O/O Directorate of Language, Art and Culture, Shimla-09 against vacancy. The above officer is directed to join his duties at his place of posting and submit the report of charge assumption to this department.

By order,
ANURADHA THAKUR,
Secretary (LAC).

भाषा, कला एवं संस्कृति विभाग

अधिसूचना

शिमला-2, 18 फरवरी, 2017

संख्या:एल.सी.डी.-सी(15)-1/2013-एल-1.—राज्यपाल, हिमाचल प्रदेश, “छिंज मेला सत्याणा”, जिला कांगड़ा, हिमाचल प्रदेश को जिला स्तरीय मेला घोषित करने की सहर्ष स्वीकृति प्रदान करते हैं।

आदेश द्वारा,
अनुराधा ठाकुर,
सचिव (भाषा-संस्कृति)।

भाषा, कला एवं संस्कृति विभाग

अधिसूचना

शिमला-2, 18 फरवरी, 2017

संख्या:एल.सी.डी.-सी(15)-1/2013-एल-1.—राज्यपाल, हिमाचल प्रदेश, “अक्षैणा मेला”, जिला कांगड़ा, हिमाचल प्रदेश को जिला स्तरीय मेला घोषित करने की सहर्ष स्वीकृति प्रदान करते हैं।

आदेश द्वारा,
अनुराधा ठाकुर,
सचिव (भाषा-संस्कृति)।

ब अदालत कर्म चन्द, कार्यकारी दण्डाधिकारी भोरंज, जिला हमीरपुर, हि0 प्र0

श्री मान चन्द पुत्र रण सिंह, गांव बलोह, डा0 बलोह, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 वादी

बनाम

आम जनता

विषय.—दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

अतिरिक्त रजिस्ट्रार जन्म एवं मृत्यु हमीरपुर के कार्यालय पत्र संख्या 24073 दिनांक 19-12-2016 अनुसार श्री मान चन्द पुत्र रण सिंह, गांव बलोह, डा0 बलोह, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 का आवेदन समस्त रिकार्ड व शपथ पत्र सहित इस कार्यालय में प्राप्त हुआ है जिसमें उल्लेख है कि अरिवन्द कुमार सपुत्र मानचन्द का जन्म दिनांक 11-3-1980 को गांव बलोह, डा0 बलोह, तहसील भोरंज, जिला हमीरपुर में हुआ है परन्तु वह जन्म तिथि 11-3-1980 को ग्राम पंचायत बलोह, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 के अभिलेख में दर्ज न करवा सके है तथा अब उक्त जन्म दिनांक 11-3-1980 को सम्बन्धित पंचायत में दर्ज करवाना चाहते है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि अरिवन्द कुमार पुत्र मान चन्द की जन्म तिथि 11-3-1980 को ग्राम पंचायत बलोह, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 के अभिलेख में दर्ज करने बारे किसी को कोई उजर/एतराज हो तो वह दिनांक 28-2-2017 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर अदालत आकर एतराज पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही की जायेगी। उसके बाद का उजर जेर समायत न होगा।

आज दिनांक 2-2-2017 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
भोरंज, जिला हमीरपुर, हि0 प्र0।

ब अदालत कर्म चन्द, कार्यकारी दण्डाधिकारी भोरंज, जिला हमीरपुर, हि0 प्र0

श्री मान चन्द पुत्र रण सिंह, गांव बलोह, डा0 बलोह, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 वादी

बनाम

आम जनता

विषय.—दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

अतिरिक्त रजिस्ट्रार जन्म एवं मृत्यु हमीरपुर के कार्यालय पत्र संख्या 24075 दिनांक 19-12-2016 अनुसार श्री मान चन्द पुत्र रण सिंह, गांव बलोह, डा0 बलोह, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 का आवेदन समस्त रिकार्ड व शपथ पत्र सहित इस कार्यालय में प्राप्त हुआ है जिसमें उल्लेख है कि अनिल कुमार सपुत्र मानचन्द का जन्म दिनांक 22-8-1977 को गांव बलोह, डा0 बलोह, तहसील भोरंज, जिला हमीरपुर में हुआ है परन्तु वह जन्म तिथि 22-8-1977 को ग्राम पंचायत बलोह, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 के अभिलेख में दर्ज न करवा सके है तथा अब जन्म दिनांक 22-8-1977 को सम्बन्धित पंचायत में दर्ज करवाना चाहते है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि अनिल कुमार पुत्र मान चन्द की जन्म तिथि 22-8-1977 को ग्राम पंचायत बलोह, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 के अभिलेख में दर्ज करने बारे किसी को कोई उजर/एतराज हो तो वह दिनांक 28-2-2017 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर अदालत आकर एतराज पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही की जायेगी। उसके बाद का उजर जेर समायत न होगा।

आज दिनांक 3-2-2017 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
भोरंज, जिला हमीरपुर, हि0 प्र0।

ब अदालत कर्म चन्द, कार्यकारी दण्डाधिकारी भोरंज, जिला हमीरपुर, हि0 प्र0

श्री चुनी लाल पुत्र प्रभा राम, गांव भौंट, डा0 ककरोट, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 वादी

बनाम

आम जनता

विषय.—दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

अतिरिक्त रजिस्ट्रार जन्म एवं मृत्यु हमीरपुर के कार्यालय पत्र संख्या 17258 दिनांक 14-9-2016 अनुसार श्री चुनी लाल पुत्र प्रभा राम, गांव भौंट, डा0 ककरोट, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 का आवेदन समस्त रिकार्ड व शपथ पत्र सहित इस कार्यालय में प्राप्त हुआ है जिसमें उल्लेख है कि रजनीकान्त सपुत्र चुनी लाल का जन्म दिनांक 15-1-1990 को गांव भौंट, डा0 ककरोट, तहसील भोरंज, जिला हमीरपुर हुआ है परन्तु वह जन्म तिथि 15-1-1990 को ग्राम पंचायत भलवानी, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 के अभिलेख में दर्ज न करवा सके है तथा अब जन्म दिनांक 15-1-1990 को सम्बन्धित ग्राम पंचायत में दर्ज करवाना चाहते है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि रजनीकांत पुत्र चुनी लाल की जन्म तिथि 15-1-1990 को ग्राम पंचायत भलवानी, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 के अभिलेख में दर्ज करने बारे किसी को कोई उजर/एतराज हो तो वह दिनांक 28-2-2017 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर अदालत आकर एतराज पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही की जायेगी। उसके बाद का उजर जेर समायत न होगा।

आज दिनांक 3-2-2017 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
भोरंज, जिला हमीरपुर, हि0 प्र0।

ब अदालत कर्म चन्द, कार्यकारी दण्डाधिकारी भोरंज, जिला हमीरपुर, हि0 प्र0

श्रीमती सुनीता देवी पत्नी श्री तिलक राज, गांव बडैहर, डा0 बडैहर, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 वादी

बनाम

आम जनता

विषय.—दरखास्त जेर धारा 8(4) विवाह पंजीकरण अधिनियम।

सचिव ग्राम पंचायत बडैहर के अनुसार श्रीमती सुनीता देवी पत्नी श्री तिलक राज, गांव बडैहर, डा0 बडैहर, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 का आवेदन समस्त रिकार्ड व शपथ पत्र सहित इस कार्यालय में प्राप्त हुआ है। जिसमें उल्लेख है कि श्रीमती सुनीता देवी पत्नी तिलक राज का विवाह दिनांक 13-06-2003 को गांव बडैहर, डा0 बडैहर, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 में श्री तिलक राज पुत्र शाली ग्राम से दिनांक 13-06-2003 को ग्राम पंचायत बडैहर, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 से हुआ परन्तु अभिलेख में दर्ज न करवा सके हैं तथा अब उक्त विवाह का पंजीकरण सम्बन्धित पंचायत में दर्ज करवाना चाहते हैं।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि श्रीमती सुनीता देवी पत्नी तिलक राज का विवाह दिनांक 13-06-2003 को ग्राम पंचायत बडैहर, तहसील भोरंज, जिला हमीरपुर, हि0 प्र0 के अभिलेख में दर्ज करने बारे किसी को कोई उजर/एतराज हो तो वह दिनांक 28-02-2017 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर अदालत आकर एतराज पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्रवाई अमल में लाई जाकर आगामी कार्यवाही की जायेगी। उसके बाद का उजर जेर समायत न होगा।

आज दिनांक 03-02-2017 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
भोरंज।

ब अदालत श्री दीक्षांत ठाकुर, सहायक समाहर्ता द्वितीय श्रेणी एवं ना0 तहसीलदार, शाहपुर,
जिला कांगड़ा, हिमाचल प्रदेश

तारीख पेशी : 27-02-2017

तिलक राज पुत्र गोपी राम, निवासी नौशहरा, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

विषय.—महाल नौशहरा मौजा बसनूर व हार मौजा प्रेई के राजस्व रिकार्ड में नाम की दुरुस्ती बारे।

प्रार्थी तिलक राज पुत्र गोपी राम, निवासी नौशहरा, तहसील शाहपुर ने इस अदालत में शपथ-पत्र सहित दरखास्त गुजारी है कि उसका नाम तहसील शाहपुर के राजस्व अभिलेख के महाल नौशहरा, मौजा

बसनूर व हार मौजा प्रेई में शोभा राम पुत्र गोपी दर्ज है, जो कि गलत इन्द्राज है। प्रार्थी राजस्व रिकार्ड में अपने सही नाम तिलक राज पुत्र गोपी राम का इन्द्राज करवाना चाहता है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि उपरोक्त राजस्व रिकार्ड में प्रार्थी के नाम की दुरुस्ती करने बारे किसी को कोई उजर/एतराज हो तो वह दिनांक 27-02-2017 को असालतन या वकालतन हाजिर अदालत आकर एतराज पेश कर सकता है हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही की जाएगी। उसके बाद कोई उजर जेरे समायत न होगा।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी एवं ना0 तहसीलदार,
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत श्री दीक्षांत ठाकुर, कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा (हि0 प्र0)

मुकद्दमा : इन्द्राज मृत्यु तिथि

तारीख पेशी : 27-02-2017

सुभाष चन्द पुत्र श्री भगत राम, निवासी कुरेला, डा0 सददू, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

1. आम जनता।
2. सचिव, ग्राम पंचायत सददू।

विषय.—बाबत इन्द्राज मृत्यु तिथि अधीन जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त विषय से सम्बन्धित मुकद्दमा इस अदालत में विचाराधीन है जिसमें प्रार्थी ने दावा किया है कि उसकी माता झांझरू देवी का देहान्त दिनांक 04-07-1992 को हुआ है परन्तु अज्ञानतावश उसकी मृत्यु तिथि का इन्द्राज संबन्धित ग्राम पंचायत सददू के रिकार्ड में दर्ज न करवाया जा सका है।

अतः इस इशतहार के माध्यम से आम जनता को सूचित किया जाता है कि यदि प्रार्थी की माता की मृत्यु तिथि को संबंधित ग्राम पंचायत सददू के रिकार्ड में दर्ज करवाने बारे किसी को कोई एतराज हो तो वह दिनांक 27-02-2017 को इस अदालत में असालतन या वकालतन हाजिर आकर अपना पक्ष पेश रख सकता है हाजिर न आने की सूरत में निर्धारित तिथि के बाद किसी भी प्रकार का कोई दावा स्वीकार्य न होगा और नियमानुसार उपरोक्त मृत्यु तिथि दर्ज करने बारे आदेश पारित कर दिए जाएंगे।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
शाहपुर, जिला कांगड़ा (हि0 प्र0)।

ब अदालत श्री दीक्षांत ठाकुर, सहायक समाहर्ता द्वितीय श्रेणी एवं ना0 तहसीलदार, शाहपुर,
जिला कांगड़ा, हिमाचल प्रदेश

रमन शर्मा पुत्र गजेन्द्र पाल, निवासी क्यारी, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

विषय.—महाल डोलयार के राजस्व रिकार्ड में नाम की दुरुस्ती बारे।

प्रार्थी ने इस अदालत में शपथ—पत्र सहित दरखास्त गुजारी है कि उसके पिता का नाम तहसील शाहपुर के राजस्व अभिलेख के महाल डोलयार में जोगिन्द्र पाल पुत्र राम सरन दर्ज है, जो कि गलत इन्द्राज है। प्रार्थी राजस्व रिकार्ड में अपने पिता के सही नाम गजेन्द्र पाल पुत्र राम सरन का इन्द्राज करवाना चाहता है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि उपरोक्त राजस्व रिकार्ड में प्रार्थी के पिता के नाम की दुरुस्ती करने बारे किसी को कोई उजर/एतराज हो तो वह दिनांक 27-02-2017 को असालतन या वकालतन हाजिर अदालत आकर एतराज पेश कर सकता है हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही की जाएगी। उसके बाद कोई उजर जेरे समायत न होगा।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी एवं ना0 तहसीलदार,
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत श्री दीक्षांत ठाकुर, कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा (हि0 प्र0)

मुकद्दमा : इन्द्राज जन्म तिथि

तारीख पेशी : 27-02-2017

हीरा लाल पुत्र श्री भीमी राम, निवासी गांव व डा0 शाहपुर, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

1. आम जनता।
2. सचिव, ग्राम पंचायत शाहपुर।

विषय.—बाबत इन्द्राज जन्म तिथि अधीन जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त विषय से सम्बन्धित मुकद्दमा इस अदालत में विचाराधीन है जिसमें प्रार्थी ने दावा किया है कि उसके पुत्र राज कुमार का जन्म दिनांक 20-12-2009 को हुआ है परन्तु अज्ञानतावश उसकी जन्म तिथि का इन्द्राज संबन्धित ग्राम पंचायत शाहपुर के रिकार्ड में दर्ज न करवाया जा सका है।

अतः इस इशतहार के माध्यम से आम जनता को सूचित किया जाता है कि यदि प्रार्थी के पुत्र की उपरोक्त जन्म तिथि को संबंधित ग्राम पंचायत शाहपुर के रिकार्ड में दर्ज करवाने बारे किसी को कोई एतराज हो तो वह दिनांक 27-02-2017 को इस अदालत में असालतन या वकालतन हाजिर आकर अपना पक्ष रख सकता है हाजिर न आने की सूरत में निर्धारित तिथि के बाद किसी भी प्रकार का कोई दावा स्वीकार्य न होगा और नियमानुसार उपरोक्त जन्म तिथि दर्ज करने बारे आदेश पारित कर दिए जाएंगे।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
शाहपुर, जिला कांगड़ा (हि0 प्र0)।

In the Court of Executive Magistrate (Naib Tehsildar) Kangra, District Kangra

Case No. 2/2017

Date of institution : 29-9-16

Date of Hearing : 27-2-2017

Shri Amar Nath s/o Rasila Ram VPO Shamirpur, Tehsil & District Kangra, H.P.

V/s

General Public

*Application under section 13(3) of Birth and Death Registration Act, 1969.***Proclamation :**

Shri Amar Nath s/o Rasila Ram VPO Shamirpur, Tehsil & District Kangra, H.P. has submitted an application before the undersigned u/s 13(3) Birth and Death registration act, 1969 alongwith affidavits and other documents that my wife namely Smt. Promila Devi Death on 25-07-2000 respectively at home Village Shamirpur, Tehsil & District Kangra. But their date could not be entered in Gram Panchayat Chakvan Shamirpur by her.

Therefore, by this proclamation the General Public is hereby informed that any person having any objection for the registration date of Death Smt. Promila Devi w/o Shri Amar Nath, s/o Shri Rasila Ram, VPO Shamirpur, Tehsil & District Kangra, H.P. may submit objection in writing in this court on or before 27-02-2017 at 10.00 A.M. failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 10-01-2017.

Seal.

Sd/-

*Executive Magistrate (Naib Tehsildar),
Kangra, District Kangra.*

ब अदालत सहायक समाहर्ता (द्वितीय श्रेणी) कल्पा, जिला किन्नौर, हि0 प्र0

नम्बर मुकद्दमा : 15 / 2016

तारीख रजुआ : 18-11-2016

श्री करण कुमार पुत्र श्री बुद्ध रत्न, निवासी ग्राम कल्पा, तहसील कल्पा, जिला किन्नौर, हि0 प्र0

बनाम

1. श्री बुद्ध रत्न पुत्र रघु लाल, गावं व डा0 कल्पा, तहसील कल्पा, जिला किन्नौर, हि0 प्र0।
2. आम जनता कल्पा, जिला किन्नौर, हिमाचल प्रदेश।

दरखास्त बाबत मकफूल-उल-खबरी।

हरगाह इश्तहार हजा से आम जनता व हितबद्ध व्यक्तियों को सूचित किया जाता है कि उपरोक्त श्री करण कुमार पुत्र श्री बुद्ध रत्न, निवासी ग्राम कल्पा, तहसील कल्पा, जिला किन्नौर ने इस कार्यालय में एक

दरखास्त मय ब्यान हल्फिया व अन्य दस्तावेजों सहित गुजार रखी है कि उनके पिता श्री बुद्ध रत्न अरसा 29 वर्षों से गुम है और न ही इस बीच उन्हें कभी भी गांव के किसी व्यक्ति द्वारा गांव में देखा गया है और न ही वह कभी गांव में आए और न ही किसी रिश्तेदारों से सम्पर्क किया जाना पाया गया है। अतः प्रार्थी उपरोक्त श्री बुद्ध रत्न की विरास्त इन्तकाल को उसके जायज वारसानों के नाम बजरिया मकफूल-उल-खबरी तस्दीक करवाना चाहता है।

अतः इस इश्तहार के माध्यम से श्री बुद्ध रत्न व आम जनता गांव पांगी को सूचित किया जाता है कि यदि उपरोक्त बुद्ध रत्न की विरास्त के इन्तकाल को बजरिया मकफूल-उल-खबरी उसके जायज वारसानों के नाम तस्दीक करने बारे किसी को भी कोई किसी किस्म का उजर व एतराज हो तो वह इस इश्तहार के प्रकाशन होने के एक माह के अन्दर असालतन या वकालतन हाजर अदालत आकर अपना उजर व एतराज पेश कर सकता है तथा बाद गुजरने मियाद किसी भी प्रकार का उजर व एतराज ना काबिले समायत होगा।

आज दिनांक 15-12-2016 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ है।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
कल्पा, जिला किन्नौर, हि0 प्र0।

ब अदालत श्री गुरमीत जी0 नेगी, कार्यकारी दण्डाधिकारी, तहसील रोहडू, जिला शिमला, हि0 प्र0

श्री भूपेन्द्र शर्मा पुत्र श्री कमल चन्द, निवासी पारसा, तहसील रोहडू, जिला शिमला, हि0 प्र0 प्रार्थी

बनाम

आम जनता

उनवान मुकद्दमा.—दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

इस कार्यालय में श्री भूपेन्द्र शर्मा पुत्र श्री कमल चन्द, निवासी पारसा, तहसील रोहडू, जिला शिमला, हि0 प्र0 ने प्रार्थना-पत्र गुजार कर निवेदन किया है कि उसका जन्म दिनांक 8-10-1992 को हुआ है परन्तु अज्ञानतावश उसका नाम व जन्म तिथि ग्राम पंचायत लोअर कोटी के जन्म रजिस्टर में आज तक पंजीकृत नहीं किया गया है तथा उसके नाम व जन्म तिथि को दर्ज करने के आदेश ग्राम पंचायत लोअर कोटी को दिये जावे।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी को भी उपरोक्त का नाम व जन्म तिथि ग्राम पंचायत लोअर कोटी में दर्ज करने में किसी भी प्रकार का एतराज व उजर हो तो वे दिनांक 27-02-2017 को असालतन व वकालतन हाजिर होकर लिखित व मौखिक प्रस्तुत करे। यदि उक्त तारीख तक कोई उजर/एतराज प्रस्तुत नहीं हुआ तो यह समझा जावेगा कि प्रार्थी का नाम व जन्म तिथि ग्राम पंचायत में दर्ज करने हेतु कोई आपत्ति नहीं है तथा नाम व जन्म तिथि ग्राम पंचायत लोअर कोटी में दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 7-2-2017 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

गुरमीत जी0 नेगी,
कार्यकारी दण्डाधिकारी,
तहसील रोहडू, जिला शिमला (हि0 प्र0)।

ब अदालत श्री गुरमीत जी० नेगी, कार्यकारी दण्डाधिकारी, तहसील रोहडू, जिला शिमला, हि० प्र०

श्री रजत सूद पुत्र श्री राकेश कुमार, निवासी नगर परिषद् रोहडू, तहसील रोहडू, जिला शिमला, हि० प्र० प्रार्थी।

बनाम

आम जनता

उनवान मुकद्दमा.—दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

इस कार्यालय में श्री राकेश कुमार पुत्र अमर चन्द, निवासी नगर परिषद् रोहडू, तहसील रोहडू, जिला शिमला, हि० प्र० ने प्रार्थना-पत्र गुजार कर निवेदन किया है कि उसका जन्म दिनांक 01-08-1994 को हुआ है परन्तु अज्ञानतावश उसका नाम व जन्म तिथि नगर परिषद् रोहडू के जन्म रजिस्टर में आज तक पंजीकृत नहीं किया गया है तथा उसके नाम व जन्म तिथि को दर्ज करने के आदेश नगर परिषद् रोहडू को दिये जावे।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी को भी उपरोक्त का नाम व जन्म तिथि नगर परिषद् रोहडू में दर्ज करने में किसी भी प्रकार का एतराज व उजर हो तो वे दिनांक 27-02-2017 को असातन व वकालतन हाजिर होकर लिखित व मौखिक प्रस्तुत करे। यदि उक्त तारीख तक कोई उजर/एतराज प्रस्तुत नहीं हुआ तो यह समझा जावेगा कि प्रार्थी का नाम व जन्म तिथि नगर परिषद् में दर्ज करने हेतु कोई आपत्ति नहीं है तथा नाम व जन्म तिथि नगर परिषद् रोहडू में दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 7-2-2017 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

गुरमीत जी० नेगी,
कार्यकारी दण्डाधिकारी,
तहसील रोहडू, जिला शिमला (हि० प्र०)।

ब अदालत श्री गुरमीत जी० नेगी, कार्यकारी दण्डाधिकारी, तहसील रोहडू, जिला शिमला, हि० प्र०

श्री अरनव सूद पुत्र श्री राजीव सूद, निवासी मेन बाजार रोहडू, तहसील रोहडू, जिला शिमला, हि० प्र० प्रार्थी।

बनाम

आम जनता

उनवान मुकद्दमा.—दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

इस कार्यालय में श्री राजीव सूद पुत्र श्री रोशन लाल, निवासी रोहडू, तहसील रोहडू, जिला शिमला, हि० प्र० ने प्रार्थना-पत्र गुजार कर निवेदन किया है कि उसके पुत्र अरनव सूद का जन्म दिनांक 23-10-2005 को हुआ है परन्तु अज्ञानतावश उसका नाम व जन्म तिथि नगर परिषद् रोहडू के जन्म रजिस्टर में आज तक पंजीकृत नहीं किया गया है तथा उसके नाम व जन्म तिथि को दर्ज करने के आदेश नगर परिषद् रोहडू को दिये जावे।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी को भी उपरोक्त का नाम व जन्म तिथि नगर परिषद् रोहडू में दर्ज करने में किसी भी प्रकार का एतराज व उजर हो तो वे दिनांक

27-02-2017 को असातन व वकालतन हाजिर होकर लिखित व मौखिक प्रस्तुत करे। यदि उक्त तारीख तक कोई उजर/एतराज प्रस्तुत नहीं हुआ तो यह समझा जावेगा कि प्रार्थी का नाम व जन्म तिथि नगर परिषद् में दर्ज करने हेतु कोई आपत्ति नहीं है तथा नाम व जन्म तिथि नगर परिषद् रोहडू में दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 7-2-2017 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

गुरमीत जी० नेगी,
कार्यकारी दण्डाधिकारी,
रोहडू, जिला शिमला (हि० प्र०)।

ब अदालत श्री गुरमीत जी० नेगी, कार्यकारी दण्डाधिकारी, तहसील रोहडू, जिला शिमला, हि० प्र०

कु० मोनिका ठाकुर पुत्री श्री कुलदेव सिंह, निवासी लोअर कोटी, तहसील रोहडू, जिला शिमला, हि० प्र० प्रार्थिया।

बनाम

आम जनता

उनवान मुकद्दमा.—दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

इस कार्यालय में कु० मोनिका ठाकुर पुत्री श्री कुलदेव सिंह, निवासी लोअर कोटी, तहसील रोहडू, जिला शिमला, हि० प्र० ने प्रार्थना-पत्र गुजार कर निवेदन किया है कि उसका जन्म दिनांक 25-08-1989 को हुआ है परन्तु अज्ञानतावश उसका नाम व जन्म तिथि ग्राम पंचायत लोअर कोटी के जन्म रजिस्टर में आज तक पंजीकृत नहीं किया गया है तथा उसके नाम व जन्म तिथि को दर्ज करने के आदेश ग्राम पंचायत लोअर कोटी को दिये जावे।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी को भी उपरोक्त का नाम व जन्म तिथि ग्राम पंचायत लोअर कोटी में दर्ज करने में किसी भी प्रकार का एतराज व उजर हो तो वे दिनांक 27-02-2017 को असातन व वकालतन हाजिर होकर लिखित व मौखिक प्रस्तुत करे। यदि उक्त तारीख तक कोई उजर/एतराज प्रस्तुत नहीं हुआ तो यह समझा जावेगा कि प्रार्थी का नाम व जन्म तिथि ग्राम पंचायत में दर्ज करने हेतु कोई आपत्ति नहीं है तथा नाम व जन्म तिथि ग्राम पंचायत लोअर कोटी में दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 8-2-2017 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

गुरमीत जी० नेगी,
कार्यकारी दण्डाधिकारी,
तहसील रोहडू, जिला शिमला (हि० प्र०)।

**In the Court of Shri Gian Sagar Negi, Sub-Divisional Magistrate, Shimla (R),
District Shimla (H. P.)**

Shri Kenny Chauhan s/o Shri A. R. Chauhan, r/o D-25, Lane-1, Sector-2, New Shimla,
District Shimla, Himachal Pradesh.

Versus

General Public

. . Respondent.

Whereas Shri Kenny Chauhan s/o Shri A. R. Chauhan, r/o D-25, Lane-1, Sector-2, New Shimla, District Shimla, Himachal Pradesh has filed an application along with affidavit in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter the date of birth of his daughter named—Ms. Sanskriti Chauhan d/o Shri Kenny Chauhan s/o Shri A. R. Chauhan, r/o D-25, Lane-1, Sector-2, New Shimla, District Shimla, Himachal Pradesh in the record of Secy., Birth and Death, Municipal Corporation, Shimla.

| Sl. No. | Name of the family member | Relation | Date of Birth |
|---------|---------------------------|----------|---------------|
| 1. | Ms. Sanskriti Chauhan | Daughter | 02-08-2005 |

Hence, this proclamation is issued to the general public if they have any objection/claim regarding date of birth of above named in the record of Municipal Corporation, Shimla may file their claims/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 20-02-2017 under my signature and seal of the court.

Seal.

Sd/-
Sub-Divisional Magistrate,
Shimla (R), District Shimla.

